



2025:DHC:2204



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 25.03.2025

+ **O.M.P.(EFA)(COMM.) 6/2016**

DAIICHI SANKYO COMPANY LIMITED Decree Holder

Through: Mr. Arvind K. Nigam, Senior Advocate 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. Kunal Chatterji and Mr. Aman Acharya, Advocates.

versus

MALVINDER MOHAN SINGH AND ORS. Judgement Debtors

Through: Mr. Rajiv Nayar, Senior Advocate, Mr. Abhinav Vasistha, Sr. Adv. with Mr. Sanjeev Sharma, Mr. Vaibhav Kakkar, Ms. Saumya Sud and Ms. Akshita Sachdeva, Adv. For Fortis Healthcare.
Mr. Varun Garg, Adv. For JD-1, 4 and 15.
Ms. Devina Sehgal and Mr. Yatharth Kansal, Advocates for JD-16 and 17.
Mr. Vaibhav Mahal for R-27

**CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

JUDGMENT (ORAL)

EX.APPL.(OS) 31/2020 (Direction)



2025:DHC:2204



1. Vide order dated 29.10.2024 passed in EA (OS) No. 31/2020, the court had ordered sale of the “Fortis” trade mark owned by Judgement Debtor No. 22, RHC Healthcare Management Services Private Limited (hereafter. referred to as “RHCHM”) by way of public auction in enforcement of the arbitral award dated 29.04.2016.
2. The auction was conducted on 21.12.2024 in which Fortis Healthcare Limited, (hereafter, referred to as ‘FHL’), the auction purchaser was the sole bidder that participated in the auction and offered a bid price of Rs 200 Crores, to purchase the trade mark/brand “Fortis”.
3. Pending confirmation of auction sale by this court, the RHCHM (“Objector”) has filed its objections to the sale and has sought to dissuade the court from confirming the sale, alleging substantial undervaluation of the brand Fortis.
4. This order deals with the objections raised by the Objector to the purchase of the Trade Mark by FHL, for the price, which according to the Objector, is not a fair value of the asset.
5. Noticeably, RHCHM has not objected to the sale *per se*, but has restricted the challenge to the valuation. RHCHM has quoted the order dated 29.10.2024 to submit, the order, even though it had directed the sale of the trade mark Fortis by way of public auction, enabled the RHCHM to object to the valuation, and advised the court to decide the objections, if any, raised regarding the valuation of the trade mark.
6. Tracing the origins of the disputes to the order dated 29.10.2024, whereby the auction was ordered, it is seen that the trade mark Fortis, was offered in these enforcement proceedings as a purgatory gesture by the JDs in a contempt Petition (Civil) No. 2120/2018 in SLP (C) No. 20417/2017



2025:DHC:2204



filed in the Supreme Court vide order dated 22.10.2022. In fact, not only Fortis, but some other IP assets owned by some of the contemnors, were offered for sale as well.

7. RHCHM has filed its objections dated 15.01.2025 supplemented by additional objections dated 23.01.2025. RHC's objection to the valuation of the trade mark is based on the following broad assertions:

- (i) No reserve price was set in the auction due to which real price discovery could not be made, thereby defeating the intent behind the auction of maximizing the returns from the sale. FHL, taking advantage of the absence of reserve price, arbitrarily submitted a modest bid of Rs 200 Crores and has managed to acquire the brand at a price lower than its fair value.
- (ii) According to RHCHM, the sale proclamation notice should have been published nationwide, rather than in local editions of the newspapers i.e., 'The Statesman' and 'Navbharat Times' on 12.12.2024. Lack of sufficient publicity resulted in single bidder participation in the auction, due to which fair value of the asset could not be discovered, thereby defeating the very object of the auction.
- (iii) DH's valuation of Rs 191.5 Crores, based on the valuation report dated 10.07.2024 is unreliable, since in the report prepared by Resurgent Valuers Pvt. Ltd., Royalty is factored @ 0.25% of the net revenue of the FHL based on the license agreement entered into between RHC, the holding company of RHCHM, and FHL, in the year 2015 whereby the brand Fortis



was licensed to FHL. The license agreement dated 07.10.2015 came to an end in the year 2021.

- (iv) According to the RHCHM, the royalty payable for the brand under the license that expired in the year 2021, cannot be made the basis of valuation in the year 2024.
- (v) RHCHM has further submitted that in the valuation report submitted by the DH, the valuer has mentioned that the royalty rate of 0.25% of the revenue has been assumed, based on the instructions received from the DH. RHCHM has therefore doubted the independence of the valuer, who is alleged to have valued the brand on the basis of restrictive mandate of the DH.
- (vi) RHCHM has submitted, that the valuer should have made its own assessment and known that royalty rate agreed to in an expired license agreement, could not have been made the basis of valuation, which depressed the actual and fair value of the asset.
- (vii) RHCHM has relied upon two reports i.e. a report dated 13.09.2017 by KPMG, where the trade mark is valued at Rs 650-750 Crores and another valuation report dated 05.12.2022, by Transique Valuation Advisers Pvt. Ltd., valuing the trade mark at Rs. 854-1205 Crores.
- (viii) RHCHM would argue that the two valuation reports filed by it, adopt the correct valuation methodology. It is argued that FHL has reported a healthy improvement of its EBITDA between the years 2017 to 2022, which should have been reflected in the valuation of the brand. With healthier EBITDA, the brand



would command a higher royalty than @ 0.25% of the revenue, assumed in the valuation report relied upon by the DH.

- (ix) RHCHM has further submitted that the FHL is aware of the actual brand value since it has been using the brand “Fortis” for running its hospitals. Earlier, FHL had made public statements that it was not interested in the brand Fortis and would discontinue its use. However, after the DH valued the brand at Rs 191.5 Crores, FHL decided to purchase the brand by taking unfair advantage of the valuation submitted by the DH. It submitted its bid price, which is nearly the same as the valuation submitted by DH. If FHL were to acquire the IP Fortis from the market, it would be expected to pay a much higher price.
- (x) FHL is a defaulter in payment of royalty, payable by it under the license agreement dated 07.10.2015. FHL has royalty arrears since 2018 until the license expired in the year 2021, whereafter FHL is unauthorizedly using the trade mark “Fortis”. There is an outstanding royalty fee of Rs 622 Crores payable by FHL which is sought to be recovered by RHC in EA No. 1525/2023. This outstanding license fee payable by FHL should have been factored in the valuation, but has been wrongly omitted. For which reason, the auction price of Rs 200 Crores offered by FHL is arbitrary and significantly less than the actual price of the asset.



- (xi) The arrears of license fee payable by FHL, should have been utilized for satisfaction of the decretal (award) amount.
- (xii) Drawing comparison with another brand SRL, owned by Headway Brands Private Ltd, which was sought to be sold in these enforcement proceedings, it is argued that the same was valued in the range of Rs 350 to Rs 580 Crores. SRL was not in use yet commanded a higher value. In comparison, Fortis, is an in-use brand, with high visibility through the hospital chain run under this name by FHL. Logically, Fortis should command a higher valuation than SRL.
- (xiii) It is further argued that brand Fortis is already charged to the FHL and its subsidiary FHSL, to secure a loan of about Rs 494 Crores, advanced by them to the Objector and its group companies. A suit for recovery has been filed by FHL and FHSL against the Objector and other borrowers is pending in Delhi High Court where a recovery upwards of Rs 500 Crores has been sought.
- (xiv) By buying the very security (Fortis brand), in auction, FHL, has enjoyed unfair advantage. FHL has acquired the security and is still claiming the loan amount in its suit. Due to the auction of brand Fortis, RHCHM is left with no asset that it could apply for repaying the loan payable to FHL and FHSL. In effect, the hypothecated IP asset is lost in auction, and RHCHM is unable to use the sale proceeds to liquidate its debt.



- (xv) According to RHCHM, FHL has a serious conflict of interest in acquiring the brand Fortis, in a public auction in these execution proceedings.
- (xvi) Objector has further argued that in the Loan Agreement between FHL and the group companies of the Objector, there is a provision for impairment of security, wherein if the value of the charged asset falls below the loan amount, FHL could change the charge from floating charge to fixed charge. According to the Objector, FHL has not claimed impairment of security, which is a proof that the value of the brand Fortis has not eroded below the loan amount of Rs 490 Crores.
- (xvii) RHCHM had filed an application, registered as E.A No 1525 of 2023 seeking a valuation of the brand “Fortis” by a court appointed valuer and a direction to FHL to pay the outstanding license fee. This application is pending adjudication. Pending order on valuation by court in the said application, auction conducted is improper, since there was no bench mark or reserve price set in the sale proclamation notice.

8. To summarise, the Objector, even though, had given its consent to sell the brand Fortis through public auction, is indirectly objecting to the sale, particularly in favour of FHL, with whom the Objector is in litigation in relation to the very brand “Fortis”. In the order dated 29.10.2024, the court granted a limited right to the Objector to challenge the valuation, however, the Objector, in a way, by challenging the competence of the auction purchaser-FHL, due to alleged conflict of interest, is doubting the auction itself, under the guise of challenging the valuation.



9. It may be noted that there is no direct and overt challenge to the FHL's competence to participate in the auction for the reasons alluded to in the objections. Perhaps, the Objector is mindful of the fact that no exception was sought from the court when the order dated 29.10.2024 was passed directing sale through public auction, to exclude FHL from participating in the auction. It is pertinent to note that DH had filed an application for early hearing which was registered as E.A 1296 of 2024. In this application DH had filed a valuation report valuing the brand at Rs 191.5 Crores. FHL had filed its reply to the said application in its capacity of Respondent No 22 and had offered to purchase the brand, which was opposed by the Objector by way of its own reply to the aforesaid application. It is noticed that the court while ordering public auction on 29.10.2024 was aware of the Objector's opposition to FHL's offer yet, did not forbid FHL from participating in the auction. For this reason, FHL's competence to participate in the auction is no longer a question open to challenge.

10. In view of the restrictive mandate of the order dated 29.10.2024, confining the potential challenge to the sale on the ground of valuation, this court will not detain its attention to the insinuations made regarding the competence of FHL to participate in the auction. However, if the FHL's participation in the auction had any manipulative negative impact on the valuation, as alleged by the Objector, the same will be examined in this order.

11. The auction in question is conducted in the background of a maze of interlocking transactions between the Objector and FHL. Be that as it may, only bare facts that are necessary and relevant for deciding the objections are being discussed here.



2025:DHC:2204



12. Curiously, brand Fortis is already being used by FHL since 2015 on the basis of a license agreement dated 07.10.2015 between RHC Holdings Ltd and FHL, whereby the brand was licensed to FHL. Later, RHC Holdings Ltd assigned the brand to the Objector, its subsidiary, in the year 2017. Upon assignment, Objector became the licensor and FHL became the licensee of the brand Fortis.

13. Contemporaneously, in the year 2017, FHL advanced an aggregate loan of Rs 494 Crores approximately to one BHC Healthcare Pvt Ltd (BHC for short)-which is the holding company of the Objector. Being the holding company of the Objector, BHC claims to control the ownership of brand Fortis. In the loan agreements, shares held by BHC in the Objector company were pledged in favour of FHL as a security for the loans, on the basis of which FHL claims encumbrance on the brand Fortis. Even the Objector in its objections has admitted to FHL's charge on the brand Fortis and has objected to the purchase of security by FHL in auction.

14. FHL has filed a suit C.S (Comm) No 468/2019 titled as M/s Fortis Hospitals Limited vs. M/s Best Healthcare Private Limited & Others, against the BHC and two other borrower companies in this court, for recovery of an aggregate loan of Rs 494 Crores approximately. The suit is pending adjudication in this court.

15. Objector too filed its own claim for recovery of arrears of license fee of Rs 622 Crores (with GST and interest amounting to Rs. 918.30 Crores, as on 31.05.2024) from the FHL, payable under the license agreement that expired in 2021, and charges for alleged unauthorised use of the brand Fortis, since the expiration of the license in the year 2018. This claim is made in E.A No 1525 of 2023, filed in this enforcement petition.



16. It is apparent, FHL and Objector are litigating with each other in relation to brand Fortis. FHL is claiming to have a charge over the brand Fortis and also a claim of over Rs 500 Crores against the group companies of the Objector towards outstanding loans. *Per contra*, Objector disputes the FHL's right to use the brand after the expiration of the license in the year 2021 and is claiming arrears of license fee around Rs 918.30 Crores payable by FHL.

17. One of the objections raised by the Objector is that its claim for arrears of license fee should be taken into consideration by the court, while deciding if the auction price of Rs 191.5 Crores offered by FHL, is a fair price of the asset. It is sought to be argued that FHL being in arrears, should not be permitted to take advantage of auction and acquire the brand without clearing the arrears.

18. However, according to this court, the license fee arrears claimed by the Objector is disputed by FHL and the matter is pending adjudication in Court. At this juncture, when it is yet to be established if FHL is liable to pay the license fee arrears, it will be premature to factor in the arrears in the auction price offered by FHL. In any case, the sale of brand to FHL may not preclude Objector from recovering the license fee arrears, if the liability is established in appropriate proceedings. It will be open for the Objector to argue, in an appropriate proceeding, that the brand purchased in auction by FHL does not absolve it from paying license fee arrears.

19. The objection that FHL has taken unfair advantage of the auction proceedings to acquire the security charged in its favour, appears to be without much substance. It can't be unseen that FHL claims to have encumbrance over the brand and is also seeking recovery of a large



outstanding loan amount of Rs 500 Crores approximately, which it claims is secured by shares pledged by the borrower held in the Objector Company. Objector and FHL are already engaged in seriously contested claims and counter claims against each other. This litigation precedes the order dated 29.10.2024. The dispute regarding the brand 'Fortis' definitely adversely impacts its valuation. This adverse circumstance is not engineered by DH or FHL's for manipulating the price at the auction but pre-exists the auction ordered on 29.10.2024.

20. It is not too improbable to assume that with prior encumbrance on the brand, and existing disputes around it, it is unlikely for the brand to attract buyers. This possibly explains the absence of any participants in the auction other than FHL. Certainly, FHL cannot be faulted for lack of participation of prospective buyers at the auction. Given the circumstances, the brand does not seem to have any market.

21. The other objection regarding the alleged conflict of interest that the FHL suffers from in acquiring the very brand that it is holding as security, it will be sufficient to say, it is for the court dealing with the suit filed by FHL for recovery of loan, to deal with objection, if any taken, by the Objector/borrower in those proceedings. The legality of the acquisition by the holder of security or its impact on the borrowers' liability to repay loan, and other incidental issues are not for this court to decide, more so, in view of the limited mandate of the order dated 29.10.2024.

22. There appears to be no substance in the objection that the valuation carried out by the DH set the bar too low for the brand to command higher price in the market. It may be noted that no reserve price was fixed in the auction. Auction was conducted in order to discover the brand's market



value. It will be incorrect to say that the valuation by DH was meant to act as a reserve price for the FHL who made a bid at the same price as DH valuation. Even if FHL had estimated the value based on the valuation made by DH, the same, per se, cannot be treated as illegal since FHL is permitted to value the brand as per its own estimations based on the surrounding factors. As already held above, there does not seem to be any manipulation by the DH and Objector to rig the auction, any inherent circumstantial advantage, cannot cast doubts on the fairness of auction.

23. Under Order 21 Rule 77, there is no stipulation that a reserve price is fixed for the sale of moveable property, unlike auction of immovable property. Moreover, Order 21 Rule 78 lays down that no irregularity in publishing or conducting the sale of movable property shall vitiate the sale and the remedy would be filing of recovery suit. However, in the case of immovable property, under Order 21 Rule 90, the grounds of material irregularity or fraud in publishing or conducting sale are available. The auction conducted is in accordance with the notice of sale proclamation which was settled in terms of Order 21 Rule 66.

24. It is also believed that the reserve price is normally set with the consent of the parties or as per the estimation of the court based on the valuations submitted by the parties. In the present case, parties were not *ad idem* on the valuation and there was a huge gulf between their respective estimations. DH valued the brand at Rs 191.5 Crores whereas the Objector's estimation ranged between Rs 650 Crores to 1200 Crores. In such a wide range, setting of reserve price would always be a matter of dispute between the parties. It is precisely to resolve this valuation dispute that the court deemed fit to opt for public auction for price discovery. According to this



2025:DHC:2204



court, there is no infirmity in the sale proclamation notice by consciously omitting to set a reserve price for the auction.

25. Looking at the two valuation reports cited by the Objector, it can't be concluded that they accurately estimate the brands value. The reports do not capture the circumstances under which the auction is held and the distress that the brand has been under due to litigation around it. KPMG report is dated 2017, when there were no disputes around the ownership of the brand Fortis. The claim made by FHL on the brand on the basis of charge created under the loan agreement was not in existence. The valuation is made based on general prospects of the health industry and financial performance of FHL. Projections have been made assuming no change in circumstance either in the financial performance of FHL or surrounding circumstances. However, since the report in 2017, serious disputes have arisen between the parties concerning the ownership of the brand. The assumption made in the report has turned out to be otherwise rendering the valuation estimated in the report vulnerable. In view thereof, there is no need to comment upon the correctness or appropriateness of the valuation methodology adopted in the report.

26. The second report, prepared by Transique Valuation Advisers Pvt. Ltd., in the year 2022 suffers from the same shortcoming. One of the assumptions of the valuation is the ownership of the brand by BHC. The report clearly mentions about the impact the litigation around the brand could have on the estimated valuation suggested in the report. Since there exist disputes around the brand, the estimated valuation projected in the report is covered by the caveat rendering the report unreliable for the



purpose. Even for this report, no comment is offered by this Court about the correctness of the adopted valuation methodology.

27. It is noted that both the reports have assumed ideal, best- case scenario projections, devoid of the realities on the ground, namely the serious disputes between the parties around the brand. Under such circumstances a valuation report that could evaluate the brand in distress would have been more fit for purpose. The two reports cited by the Objector are therefore not fit for purpose and cannot be referenced to challenge the auction price.

28. It will be appropriate to mention that if the report relied upon by DH through its commissioned valuers is questioned due to the alleged restrictive mandate, questions can be raised about the independence of the valuers of the two reports cited by the Objector. Both these reports are by the valuers commissioned by the Objector. The reports are too sanitised for making projections that have rendered them unreliable as held above.

29. The Court was perhaps conscious of the divergence of opinion between the parties on their respective valuation estimates and in order to resolve the impasse, chose public auction as a means to discover the price under the prevalent circumstances.

30. As far as public auction as a means to discover price and sell the brand is concerned, pertinently, the Objector has not challenged the order dated 29.10.2024, to challenge the public auction mode adopted by the court to sell the asset or the order of JR dated 04.12.2024 laying down the manner of publication of the proclamation.

31. Once public auction route was chosen for sale, the price discovered in the said auction, must be assumed to be the fair value of the brand at the



time of auction, unless fraught with material irregularities. The auction is meant to give finality to the valuation disputes between the parties. Price discovery through auction is a tried, tested and legally recognisable method.

32. An auction conducted in terms of the sale proclamation notice must be honoured unless the auction itself is manipulated by interested parties. As stated above, there is no reason to believe that the auction was manipulated by the DH or auction purchaser to manipulate the price of the asset.

33. For this reason, reference to valuation reports by the Objector is of no avail once the court has chosen to adopt price discovery through public auction. Although, the court in its order dated 29.10.2024 permitted the Objector to raise objections regarding valuation, if any, however, since the court deemed it fit to adopt public auction as the means of price discovery, the objections to valuation need to be necessarily confined to any manipulation, if practiced in the auction to artificially control the price.

34. For the reasons stated above the auction has taken place according to the sale proclamation notice, which was settled with the consent of the parties. There are no reasons to conclude that the price offered by the FHL is not the correct price of the asset. The price offered is the price of the asset discovered in auction and hence binding.

35. Furthermore, even the Objector has not indicated if it has an offer from a third party to purchase the brand at a price higher than the auction price. A higher offer would not render the offer by auction purchaser infirm. However, this only shows that there seems to be no buyers for the brand.

36. The only objection raised is that a sale notice published in a paper of wider national circulation may have elicited a better response. This assumption is incorrect. The sale pertains to a widely known brand in the



health industry. The asset on sale is not a piece of land or some other localised asset which would require large publicity across the country. It is not too improbable to assume that the players from the health industry would be aware of the disputes surrounding the brand. It is not improbable to assume that no one from the industry is interested in the brand, which FHL claims to have charge on, and is a flagship brand for them. Even if there was a bidder that had offered a higher price than FHL, the asset sold would have been sold with prior encumbrance and would be a subject matter of disputes in Court. For this reason, it appears, there was only one bidder at the auction. The brand seems to have no market value in its current state.

37. Objector has cited several case law in support of its objections. I have gone through the case law and do not find the procedure adopted by this court suffering from any material irregularity dissuading me from confirming the sale. Still, I would like to discuss the case law cited and quote from certain judgments the principles laid down for the courts to follow.

38. In Ram Kishun vs. State of Uttar Pradesh, (2012) 11 SCC 511, the court was dealing with an auction conducted for recovery of public dues. In this context the court reiterated the general principle to be followed in auction i.e. to derive maximum price from the auction in order to recover maximum public dues. Court held that an auction purchaser has no vested right to seek confirmation of sale. There is no quarrel with this proposition. This court has examined the objections to see if the allegations regarding the valuation are valid before confirming the sale.

39. In Varghese v. Jewel Rock Hire Purchase Kuries (P) Limited, 2018 SCCOnLine Ker 1728, the court was examining the allegation of fraud



related to auction. There was an allegation of rigging of auction between the decree holder and auction purchaser. Also, auction purchaser did not deposit the bid price within 15 days of the auction which was held to be in violation of Order XXI Rule 84 of CPC. It was on these specific allegations that the court refused to confirm the auction. However, in the present case, there is no fraud alleged between the DH and auction purchaser to rig the auction to prevent other bidders from participation. As discussed above, a mere circumstantial advantage enjoyed by a party in auction does not qualify as fraud or manipulation of auction. The ratio laid down in the judgment is very much beyond debate but the facts on hand are distinguished.

40. In Rajiv Kumar Jindal v. BCI Staff Colony Residential Welfare Assn., **2023 SCC OnLine SC 507**, the court was dealing with an auction conducted under SICA 1985, whereunder there was a specific provision for obtaining a valuation report and setting a reserve price for auction. The court held that the auction was not in terms of the provisions of the said Act. Certainly, mandatory reserve price and valuation report is not the requirement of sale through auction conducted under Order 21 Rule 66. For the said reason, the said judgment has been cited out of context.

41. In Lakshmanasami Gounder v. C.I.T., Selvamani, **(1992) 1 SCC 91**, the Court was analysing an auction conducted under Tamil Nadu Revenue Recovery Act 1864, wherein the place of auction was not mentioned in the auction notice. Court attributed restrictive participation in the auction to the said reason and refused confirm the sale. Again, as a proposition of law that auction terms and conditions must be clearly published for maximum gains, is not disputed however, there is no parity of facts with the facts of this case. There is no allegation that the place of auction was not mentioned in the



auction notice which prevented a larger participation in the auction. For this distinguishing feature, the judgment has no applicability here.

42. Kayjay Industries v. Asnew Drums, (1974) 2 SCC 213 cited by the Objector, is very instructive. The court has rather held that mere inadequacy of the price is no reason to not confirm the sale. On the approach that the court should follow in deciding the issues of valuation, it will be useful to extract the following passage from the judgement:

“ 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 ”

Clearly, the mandate is to be pragmatic and realistic in appraisal of price, based on prevalent factors, rather than being wishful and too much influenced by future potential or valuations historically.

43. There is no doubt about the settled principle laid in LICA (P) Ltd. (No. 1) v. Official Liquidator, (2000) 6 SCC 79, that the auction purchaser has no vested right. Following this principle, the court is examining the objections raised by the Objector, before confirming the sale.

44. In Allahabad Bank v. Bengal Paper Mills Co. Ltd., reported as (1999) 4 SCC 383, the court dealt with an auction in winding up proceedings of a Company, under Section 447 of the Companies Act. The court had set aside the auction on the ground that the auction purchaser was not willing to pay in accordance with the payment schedule laid down in the notice of sale. Even the valuation report relied upon was found to be suspicious since it



failed to include the value of the land. Like other citations, this judgment too is applicable for general propositions of law but doesn't apply to facts of the case.

45. In Desh Bandhu Gupta vs. N.L. Anand, (1994) 1 SCC 131, the Court did not confirm the sale since it was found that no notice for settlement of sale proclamation terms was issued to the Judgment Debtor. The court found the auction to be in violation of Order 21 Rule 66 (2) (e). The applicability of the judgment to the facts of the present case is not made out.

46. In Navalkha & Sons v. Ramanya Das, (1969) 3 SCC 537, the court did not confirm the sale because from the facts it appeared that the auction was conducted in a manner that it was not a public auction but confined to two participants by design. In the present case, there is no allegation to the auction being manipulated to ensure single bidder participation. The only allegation is that publication in a newspaper with a wider circulation would have attracted better participation in the auction. This objection has already been dealt with above. This judgment has no application to the facts of the case.

47. As per the ratio laid down in the cited case law, the auction held does not suffer from any material irregularity. The auction is compliant of the conditions laid down in Order 21 Rule 66 of the CPC.

48. Objections raised by the Objector are rejected and the sale of brand Fortis in favour of FHL in public auction held on 21.12.2024 is hereby confirmed.

49. FHL has made anticipatory submissions, requesting the court to address the issues regarding payment of GST on the sale of the brand and transfer to trade mark registration in its favour. It is submitted by the FHL,



in case the court is inclined to confirm the sale in its favour, then the liability of pay GST on the sale be clarified in the order. It is submitted by FHL that as per Section 9 of the CGST Act, Objector (supplier) is liable of pay GST on the sale of the brand and goodwill associated with the brand Fortis. It is apprehended by FHL that the Objector may not pay the applicable GST on the transaction since its GST registration stands cancelled. FHL has proposed that in order to facilitate the smooth transfer of the IP asset, it undertakes to pay the applicable GST and has sought certain directions to be issued by this court.

50. It is further submitted by FHL that since the IP asset is sold in an auction conducted by court, the asset can be said to be in custody of the court and under Section 92 of Central Goods and Services Tax Act, 2017, the Receiver, appointed by the court is liable to pay the GST in relation to the asset. FHL has cited the decisions in Commr. v. Hindustan Urban Infrastructure Ltd., (2015) 3 SCC 745 and Bai Mamubai Trust v. Suchitra, 2019 SCC OnLine Bom 1854 in support of its submissions based on which it has urged that the court may appoint an agent of the court to pay GST on the sale to the authorities, and make necessary compliances required under the GST Act.

51. Additionally, directions are sought to the effect that the trade mark registry be directed to acknowledge the transfer of the trade mark Fortis in favour of FHL in its record. It is submitted by FHL that such directions are necessary to facilitate transfer of IP asset in its favour.

52. I have heard the submissions with some curiosity and respectfully disagree with the FHL. Under Section 92 of the CGST Act, where the estate of a taxable person is in control of the Court of Wards, Administrator



General, the Official Trustee or any receiver or manager who manages the business under an order of the court, tax payable could be recovered from such person. There is a fundamentally incorrect assumption that the Fortis trade mark is in custody of a court appointed receiver or is in the custody of this court or court auctioneer. The court has only appointed an officer to conduct the public auction for the sale of asset in execution. Court auctioneer is not a manager contemplated under Section 92 tasked with a duty to manage the business of Objector.

53. There is no parity of judicial powers and authority of managers mentioned in Section 92 and that of Court Auctioneer. For this reason, Section 92 has no applicability in the present case.

54. In view thereof, auctioneer can't be made liable under Section 92 to pay GST to the authorities and the liability remains that of the seller, or buyer, as the case may be under the GST Act and Rules. This Court is not competent to decide the issues of GST liability on the sale, much less, issue a direction that FHL shall be entitled to claim input tax credit in its GST filings, as is sought in the submissions made by FHL.

55. However, if FHL is seeking a direction to pre-emptively resolve the GST issues apprehending non- payment of GST by Objector, and not necessarily as direction under Section 92 of the CGST Act, holding court auctioneer, liable to pay GST for and on behalf of the liable entity, then it is felt that such a direction is premature at this stage. It will be proper to first find out if Objector has refused to pay GST, or is unable to pay the same due to its allegedly cancelled registration.

56. Under the circumstances, the only direction that could be issued at this stage, is that the parties are expected to comply with the GST laws, in



2025:DHC:2204



relation to the payment of tax liability and compliances, applicable to the present transaction.

57. Regarding, transfer of ownership of the trade mark, it is clarified that upon the confirmation of the sale of trade mark Fortis in favor of FHL, it shall become the owner of the trade mark Fortis, with all the attendant rights and liabilities. As an owner, FHL is free to seek transfer of the trade mark in the records maintained by the trade mark registry, who shall record the change of ownership in their record, in accordance with laws and rules.

58. However, FHL and the Objector are free to seek any clarification or direction from this court, in relation to the sale of trade mark Fortis to FHL, that may be required by GST/Trade Mark, or any other authority in future, in order to facilitate the transfer in favour of FHL.

59. List before the Joint Registrar (Judicial) on 16.04.2025 for confirmation of sale proceedings in terms of the Sale Proclamation Notice and execution of Sale Deed/Sale Certificate subject to payment of balance amount.

EX.APPL.(OS) 1164/2020 (U/O XXI R 46D by Religare Finvest Ltd.)
EX.APPL.(OS) 1525/2023 (Direction) EX.APPL.(OS) 1295/2024
(Direction)

List before Roster Bench on 28.04.2025.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 25, 2025/na