



2025:DHC:5246-DB



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

Date of decision: 02<sup>nd</sup> JULY, 2025

IN THE MATTER OF:

+ **W.P.(C) 6045/2021, CM APPL. 19129/2021, CM APPL. 19130/2021 & CM APPL. 43275/2022**

**PRADEEP KUMAR LATHAR**

.....Petitioner

Through: Mr. Sakal Bhushan, Mr. Vasu  
Bhushan & Mr. Nipun Bhushan, Advs

versus

1. **ADVANCE SURFACTANTS INDIA LTD., (UNDER LIQUIDATION) & ORS.**

.....Respondents

Through: Mr. Pallav Saxena, Mohammad  
Nausheen Samar, Mr. Avijit Sharma,  
Mr. Nipun Sharma, Ms. Supreeti  
Chauhan & Ms. Akriti Singh, Advs.  
for R-2 to 9.  
Mr. Sanjeev Sagar, Sr. Adv. with Ms.  
Nazia Parveen Adv. for R-10.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN**

**SHANKAR**

**JUDGMENT**

**SUBRAMONIUM PRASAD, J.**

1. The challenge in the present Writ Petition is to the order dated 17.05.2021, passed by the Debts Recovery Appellate Tribunal (DRAT) dismissing Appeal No.481/2019, which was filed by the Petitioner herein against the Order dated 01.11.2019, passed by the Debts Recovery Tribunal



(DRT) in SA No.351/2018. The DRT *vide* Order dated 01.11.2019 had quashed the auction of the property which has been upheld by the DRAT.

2. It is pertinent to mention here that the Petitioner herein is the auction purchaser. Respondents No.1 to 9 are the borrowers and the Respondent No.10 is the financial institution/creditor.

3. Shorn of unnecessary details, the facts leading to the present Petition are as under:-

- a. Respondents No.1 to 9 availed a term loan of Rs.23 crores from Respondent No.10 herein. It is stated that the loan was secured by creating an equitable mortgage over the built-up property and land situated at Khasra No.510/1(2-4), 511-1(5-5) and 511/2/1, Village Rajokri, New Delhi, admeasuring 10,450 sq. yds. along with construction therein admeasuring 16,500 sq. ft. (*hereinafter referred to as 'the property in question'*) in favour of Respondent No.10 herein.
- b. It is stated that due to non-payment of the loan amount, the account of the Respondents No.1-9 was declared as Non-Performing Asset (NPA) by Respondent No.10 on 30.04.2017. A demand notice dated 08.05.2017 was issued by the Respondent No.10 to the Respondents No.1-9 under Section 13(2) of the Securitization and Reconstruction of Financial Asset and Enforcement of Secured Interest Act, 2002 (*hereinafter referred to as 'the SARFAESI Act'*).



- c. Consequent to the proceedings under Section 14 of the SARFAESI Act, the Respondent No.10 herein took the possession of the property in question.
- d. Valuation report of the property in question was prepared. The approved valuer of the Respondent No.10 vide its Report dated 11.04.2018 valued the property in question at Rs. 24,17,90,636/-. It is stated that disputes were raised by the Borrowers on the ground that the property in question has been under-valued. SA No.351/2018 was filed by the Borrowers before the DRT seeking setting aside of the pre-sale of the property in question.
- e. It is stated that four pre-sale notices were published by the Respondent No.10 in terms of Rule 10 of the Security Interest (Enforcement) Rules, 2022 (*hereinafter referred to as 'the Security Rules'*). However, the property in question could not be sold for the reason that there were no buyers for the property. The price of the property in question was constantly reduced by Respondent No.10 in each of the pre-sale notices.
- f. It is stated that the fifth pre-sale notice dated 19.12.2018 was published by the Respondent No.10 keeping the base price of the property in question at Rs.19.80 crores. Bids were invited from the general public for the sale of the property in question. The advertisement provided that the auction would be held on 09.01.2019 at a reserve price of Rs.19.80 crores and the interested bidders had to deposit an earnest money of Rs.2



crores with the authorized officer of the Respondent No.10 by way of RTGS/NEFT/Demand Draft on or before 05:00 PM on 07.01.2019.

- g. It is stated that being aggrieved by the pre-sale notice dated 19.12.2018, the Borrowers filed IA No.12/2019 in SA No.351/2018 seeking quashing of the pre-sale notice dated 19.12.2018 on the ground of undervaluation of the property in question.
- h. It is stated that the Petitioner herein came to know about the pending application before the DRT.
- i. IA No.12/2019 was dismissed by the DRT on 07.01.2019 which was the last date of deposit of earnest money of Rs.2 crores. It is stated that by the time the DRT pronounced the orders in IA No.12/2019, the banking hours were over. The Petitioner herein could not obtain the requisite demand draft. The Petitioner herein gave a cheque of Rs.2 crores along with a letter to the authorized officer of the Respondent No.10 requesting him to accept the same towards earnest money deposit for the auction of the property in question. In the letter it was stated that since the bank closes at 04:00 PM and the DRT pronounced the order in IA No.12/2019 after 04:00 PM, instead of following the procedure, the Petitioner submitted a cheque of Rs.2 crores. In the said letter the Petitioner undertook to replace the cheque with a demand draft on the next day. It is stated that on 08.01.2019 & 09.01.2019 there was a strike in the banks and no



banking operations could take place and the Petitioner was unable to replace the cheque with the demand draft. It is stated that the Petitioner wrote a letter dated 08.01.2019 to the authorized officer of the Respondent No.10 requesting him to permit the Petitioner to deposit the demand draft on 10.01.2019 when the banking operations were expected to resume. It is stated that the Authorized Officer of the Respondent No.10 accepted the request of the Petitioner and permitted the Petitioner to participate in the auction, which was to be held on 09.01.2019.

- j. It is pertinent to mention that the Respondent No.10 accepted the bid of the Petitioner herein. However, it never encashed the cheque given by the Petitioner towards the earnest money deposit.
- k. It is stated that the Petitioner was the sole bidder in the e-auction and his bid of Rs.19.85 crores against the reserve price of 19.80 crores for the property in question was declared successful. It is stated that on 10.01.2019 the Petitioner made a payment of Rs.4,96,25,000/-, being 25% of the reserve price, to the Respondent No.10 by way of RTGS transfer. It is stated that the said amount included the earnest money deposit of Rs.2 crores. It is stated that on receipt of the amount, the Respondent No.10 returned the cheque to the Petitioner and vide letter dated 10.01.2019 the Petitioner was asked to make the payment of the



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balance amount of Rs.14,88,75,000/- within 15 days from 10.01.2019, i.e. on or before 25.01.2019.

1. It is stated that on 22.01.2019 the Petitioner wrote a letter to the Authorized Officer of Respondent No.10 seeking extension of time by 90 days to pay the balance amount. Vide letter dated 12.02.2019, Respondent No.10 granted extension of 60 days to the Petitioner to make the payment of the balance amount. Therefore, the Petitioner herein had to pay the balance amount on or before 11.03.2019. It is stated that a sum of Rs.50,00,000/- was paid by the Petitioner on 27.02.2019. Thereafter, on 08.03.2019, i.e. just three days before the expiry of the extended period, the Petitioner herein once again wrote a letter to the Authorized Officer of Respondent No.10 informing him that he was ready with the remaining payment and seeking confirmation as to whether the sale certificate would be issued and registered upon receipt of the remaining payment or not. It is stated that vide email dated 01.04.2019, the Respondent No.10 directed the Petitioner to pay the remaining amount within 48 hours. However, vide email dated 02.04.2019, the Petitioner herein sought time till 09.04.2019 for making the payment. It is stated that the request of the Petitioner was accepted by the authorized officer of Respondent No.10. It is stated that the remaining amount was paid by the Petitioner on 08.04.2019 and the Respondent No.10 issued a sale certificate



dated 09.04.2019 to the Petitioner. The sale certificate was registered on 30.04.2019.

- m. The sale was challenged by the borrowers by filing IA No.884/2019 in SA No.351/2018. Vide Order dated 01.11.2019, the DRT set aside the auction on the ground of irregularities in the process of auction. The DRT also passed strictures against the authorized officer of Respondent No.10 who has confirmed the sale which has been conducted in violation of the pre-sale notice.
  - n. Order dated 01.11.2019 was challenged by the Petitioner and the Respondent No.10 by filing separate appeals, being Appeal No.481/2019 & 451/2019 respectively, before the DRAT.
  - o. Vide Order dated 17.05.2021, the DRAT dismissed the appeal upholding the order passed by the DRT setting aside the auction in favour of the Petitioner herein and cancelling the sale certificate. The DRAT also found fault with the conduct of the officers of the Respondent No.10 and held that it would be open for the higher-ups of Respondent No.10 to take suitable action against the authorized officer of Respondent No.10.
  - p. It is this Order which is under challenge in the present Petition.
4. It is the contention of the learned Counsel for the Petitioner that the Petitioner is a bona fide purchaser of the property in question. He states that Petitioner has parted away with substantial amount of money. He further states that there were no takers for the property in question in the four pre-



sale notices published by the Respondent No.10. He states that in the fifth pre-sale notice also it was only the Petitioner who made an attempt to buy the property in question. He states that by the time the order was passed by the DRT in IA No.12/2019 on 07.01.2019, the banking hours were over and the Petitioner gave a cheque of Rs.2 crores as earnest money deposit to the authorized officer of Respondent No.10 along with a letter explaining his inability to deposit Rs.2 crores by way of demand draft. He states that the cheque given by the Petitioner herein was accepted by the authorized officer of Respondent No.10. He states that the Petitioner undertook to replace the cheque with a demand draft on the next day, i.e. 08.01.2019. However, on 08.01.2019 & 09.01.2019 there was a strike in the banks and no banking operations could take place and the Petitioner was unable to replace the cheque with the demand draft. He states that the Petitioner wrote a letter dated 08.01.2019 to the authorized officer of the Respondent No.10 requesting him to permit the Petitioner to deposit the demand draft on 10.01.2019 when the banking operations were expected to resume and the Authorized Officer of the Respondent No.10 accepted the request of the Petitioner and permitted the Petitioner to participate in the auction, which was to be held on 09.01.2019. He states that the Petitioner participated in the auction and was declared successful. He states that the Petitioner deposited Rs.4,96,25,000/-, being 25% of the reserve price, to the Respondent No.10 by way of RTGS transfer on 10.01.2019. He draws the attention of this Court to Rule 9(3) of the Security Rules to contend that the said Rules stipulates that the purchaser shall immediately, i.e. on the same day or on the next working day, shall deposit 25% of the amount of the sale price, which is inclusive of the earnest money deposited, if any, to the authorized officer



of the concerned bank. He, therefore, states that the condition stipulated in the Rules for deposit of earned money of Rs.2 crores on 07.01.2019 before 05:00 PM is only a directory condition and not a mandatory condition. He states that it is well settled that the conditions which are not mandatory in nature can be waived by the Bank and, therefore, the auction need not be set aside on the ground that a directory condition has not been complied with. He further states that even if it is assumed that the condition of earnest money deposit has been violated, is accepted, it at best can be an irregularity and not an illegality and, therefore, both – the DRT and the DRAT have erred in setting aside the auction for the violation of the conditions which are not mandatory in nature. He states that the circumstances because of which the money was not deposited within the time prescribed in the pre-sale notice was beyond the control of the Petitioner and, therefore, the delay ought to have been condoned. He states that valid extension of time has been granted to the Petitioner by the Bank to deposit the money which has been complied with.

5. *Per contra*, learned Counsel appearing for Respondent Nos.1-9 contends that the entire procedure of auction is vitiated by fraud and collusion on the part of the Respondent No.10 and the Petitioner herein. He states that the relaxation of conditions only for the petitioner by the Respondent No.10 is violative of Article 14 of the Constitution of India. He states that if any of the conditions were to be relaxed then the members of public ought to have been put to notice and a fresh auction ought to have been conducted which might have attracted a better buyer. He also states that Courts, while exercising jurisdiction under Article 226/227 of the



Constitution of India, while evaluating the correctness or otherwise of the judgement of the Tribunals have to consider the decision making process and the Courts do not substitute their own conclusion to the one arrived at by the Tribunals just because another conclusion is possible. If the decision making process is just, fair and reasonable, the Writ Courts do not disturb the Order of the Subordinate Court/Tribunal. Learned Counsel for Respondents No.1-9 states that apart from the fact that Respondent No.10 accepted the earnest money deposit in the form of cheque which was against the pre-sale Notice, which stipulated that the earnest money has to be deposited by way of Demand Draft/RTGS/NEFT only. He also states that the Respondent No. 10 had also extended the time for the Petitioner to deposit the balance amount of money and the same is in violation of Rule 9(4) of the Security Rules. He states that the auction took place on 09.01.2019 and 25% of the reserve price of the property in question was to be deposited within 24 hours of the auction and the balance amount was to be deposited within 15 days of the auction. He states that while the Petitioner deposited 25% of the reserve price of the property in question within 24 hours of the auction, the balance amount was not deposited by the Petitioner in the stipulated time. He states that the balance amount was paid only on 08.04.2019, i.e. after 90 days from the date of auction and the same is in violation of Rule 9(5) of the Security Rules. Learned Counsel appearing for the Respondents No.1-9 states that the Respondent was in collusion with the Petitioner and, therefore, the entire procedure of auction was vitiated by fraud.



6. Learned Counsel appearing for the Respondent No.10 contends that no prejudice has been caused to the Borrowers by the auction. He states that the auction has not been challenged by an intending purchaser but by the borrowers, who do not have any locus to challenge the auction. He states that it is not as if the borrowers were bidding for the property in question and that they have been prejudiced by the way the auction has been conducted. He states that the challenge of the borrowers regarding under-valuation of the property in question has already been dismissed by the DRAT and that order has attained finality. He states that the intent of the Borrowers is only to thwart the auction. He states that the Borrowers have not approached the Tribunal with clean hands and, therefore, the challenge could not have been entertained by the DRT and the DRAT. He further states that there were five attempts to sell the property in question and since there were no buyers, the reserve price of the property in question had to be reduced every time. He states that the Respondent No.10 had to recover the public money and it is for this reason that it did not want to go through the process of auction for the sixth time as the same would have entailed further reduction in the reserve price of the property in question. Learned Counsel for the Respondent No.10 also supports the contention of the learned Counsel for the Petitioner stating that no mandatory condition has been violated in the auction process and at best the auction process can be termed as irregular but not illegal and, therefore, the auction process need not be set aside.

7. Heard the learned Counsels for the Petitioner and the Respondents and perused the material on record.



8. The facts as narrated in the Petition discloses the following violations of the prescribed procedure:

- i. The pre-sale notice stipulated that the earnest money of Rs.2 crores had to be deposited through RTGS/NEFT/Demand Draft on or before 05:00 PM on 07.01.2019. This condition has not been complied with by the Petitioner inasmuch as the Petitioner gave a cheque of Rs.2 crores to the Respondent No.10 instead of depositing the amount through RTGS/NEFT/Demand Draft.
- ii. The cheque given by the Petitioner was not encashed by the Respondent No.10 and the same was returned to the Petitioner on the Petitioner depositing 25% of the reserve price of the property in question.
- iii. The balance amount of the auction was to be deposited by the Petitioner within 15 days from the date of auction. The same was not complied with by the Petitioner inasmuch as the Petitioner sought extension of 90 days to deposit the amount and the Respondent No.10 granted 60 days' extension to the Petitioner for depositing the same thereby permitting the Petitioner to deposit the balance amount on or before 11.03.2019. Out of the total balance amount of Rs.14,88,75,000/-, the Petitioner herein deposited only a sum of Rs.50,00,000/- on 27.02.2019. The balance amount was paid only on 08.04.2019, i.e. after 90 days from the date of auction.



9. The contention of Respondent No.10 that the Borrowers cannot challenge the auction cannot be accepted. This Court is examining the procedure of auction. The purpose of auction is to get maximum bidders. The Respondent No.10, which is discharging a public function, is bound by the principles of Article 14 of the Constitution of India. If the Respondent No.10 was to relax a particular condition then it ought to have given notice to the larger public stating that such a condition has been relaxed so that more bidders could have been attracted. It was not open for the Respondent No.10 to relax the conditions for one person. Nothing prevented the Respondent No.10 to go for fresh auction after the DRT rejected the application of the Borrowers questioning the fifth pre-sale notice. The Respondent No.10 could have issued a fresh pre-sale notice after the challenge to the fifth pre-sale notice was repealed by the DRT.

10. The contention of the Respondent that if the property had to be auctioned for the sixth time, the price would have to be reduced is an incorrect assumption. The fact that the auction purchaser in the present case was willing to pay the amount and did in fact, in the manner impugned herein make the payment, belies this assumption. In any event, the assumption cannot form the basis or the rationale for going ahead with a mode completely against the prescribed procedure.

11. The purpose of earnest money deposit is to show seriousness or bona fide of an auction purchaser. It cannot be said that the said condition is only directory in nature. It was compulsory for every auction purchaser to show its bona fide by depositing the earnest money deposit. Deposition of earnest money was a condition precedent for a person to participate in the auction



process. A condition precedent cannot be said to be directory in nature and is, therefore, mandatory in nature.

12. Further, Rule 9(4) and Rule 9(5) of the Security Rules reads as under:

*“9(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)].*

*9(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.”*

13. In the facts of the present case, a sum of Rs. Rs.4,96,25,000/-, being 25% of the reserve price, was deposited by the Petitioner on 10.01.2019 and the balance amount of Rs.14,88,75,000/- was to be paid within 15 days from 10.01.2019, i.e. on or before 25.01.2019. Respondent No.10 for reasons best known to it relaxed the condition of depositing the balance amount beyond 15 days and extended the period by 60 days. Respondent No.10 could not have relaxed the time further and accepted the payment from the Petitioner beyond 60 days. The DRT and the DRAT were, therefore, justified in coming to the conclusion that there was a collusion between the authorized officer of Respondent No.10 and the Petitioner. This Court is not inclined to



make further comments as the DRAT has directed the Bank for initiation of a vigilance inquiry on the authorized officer of Respondent No.10 and any comment by this Court would prejudice the rights of the authorized officer of Respondent No.10 in case the Respondent No.10 initiates an inquiry against the authorized officer of Respondent No.10.

14. It is well settled that if there is a power coupled with duty mandating that an act has to be done in a particular way, it has to be done only in that way or not at all and all other modes are forbidden. The said principle has been laid down in Taylor v. Taylor, (1876) 1 Ch.D 426, where it was observed that where a statutory power is conferred and the mode of exercising is laid down, it means that no other mode has to be adopted. This judgment has been followed by the Privy Council in another celebrated judgment: Nazir Ahmad v. King Emperor, AIR 1936 PC 253, wherein it has been observed as under:-

*“11. ....where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”*

This principle has been consistently followed by the Supreme Court in a number of judgments (Refer: State of Rajasthan v. Mohinuddin Jamal Alvi & ANR., (2016) 12 SCC 608; State v. Sanjeev Nanda, (2012) 8 SCC 450); Nika Ram v. State of H.P., (1972) 2 SCC 80; Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354) making it mainstream in the India Legal Jurisprudence.

15. Applying the said principles to the facts of the present case, it was not open for the Respondent No.10 to relax the conditions of pre-sale notice



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only for the Petitioner herein without giving any notice to the larger public. Giving notice to the public at large would have persuaded other persons to deposit the earnest money beyond the last date, as stipulated in the pre-sale notice. The Respondent No.10 was discharging a public function and, therefore, it was duty bound to ensure that the principles enshrined in Article 14 of the Constitution of India are followed.

16. In view of the above, this Court is of the opinion that the Ld. DRT and DRAT were justified in coming to the conclusion that the auction process was vitiated by fraud and therefore, the order dated 17.05.2021, passed by the DRAT dismissing Appeal No.481/2019, which was filed by the Petitioner herein against the Order dated 01.11.2019, passed by the DRT in SA No.351/2018, quashing the auction of the property in question in favour of the Petitioner herein, does not require any interference by this Court.

17. Accordingly, the Petition is dismissed, along with the pending applications, if any.

**SUBRAMONIUM PRASAD, J**

**HARISH VAIDYANATHANSHANKAR, J**

**JULY 02, 2025**

*Rahul*