

Then on the 15th day M/s Al-Baraka Apparel (hereinafter the “defaulting bidder”) moved an application under section 151 CPC (**CMA No.111 of 2021**) seeking one month extension in time for deposit of balance sale consideration. The perusal of application CMA No.111/2021 shows that the affidavit in support of that application was sworn on the last working hour at **2:45 p.m.** of **24.3.2021**, the 15th day to fulfill the requirement. Till today time has not been extended by this Court and the application is pending.

3. The consequences of failing to make the payment within time is mentioned in condition No.(vi) and (vii) of the auction notice which is reproduced below:-

“vi. In default of payment of the balance purchase money within the period stipulated, **the property shall be re-sold after the issue of a fresh notification of sale.**

vii. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the **defaulting purchaser(s) shall forfeit all claims to the property** or to pay part of the sum of which it may be subsequently sold.”

In view of the above, the Official Assignee pursuant to condition No.(vii) above was under an obligation to have immediately filed a Reference on **25.3.2021** but instead he filed **Reference No.04/2021** on **07.4.2021** after two weeks and made the following prayers:-

“(i) That an amount of Rs.5,57,00,000/- being 25% of the bid amount deposited by the auction purchasers M/s Al-Baraka Apparel may be forfeited in terms of conditions laid under the sale proclamation.

OR

(ii) This Hon’ble Court may be pleased to pass appropriate order as deem fit in the circumstances of the case.

4. On **09.4.2021**, one of the shareholders filed an application under Order XXI Rule 86 read with Section 151 CPC (**CMA No.135 of 2021**) and offered to purchase the property in question for

Rs.23,25,00,000/- with the undertaking to pay 25% of the total amount within 24 hours and balance amount within seven days from the date of the order of High Court on his application. This offer is only One Crore rupees above to the highest bid offered by M/s Al-Baraka Apparel who later failed to pay the balance bid money. Then on **22.04.2021** the second highest bidder of the last auction also filed identical application (**CMA No.151 of 2021**) also showing willingness to purchase the property in question for Rupees One Crore more than the offer made by the defaulting bidder M/s Al-Baraka Apparel.

5. Learned counsel for the applicants who are ready to buy the property in question have contended that the conditions for auction were mandatory and therefore, there should be a re-auction and/or the Court should accept their offer as the highest bidder in terms of **condition Nos.(vi) and (vii)** has lost his right to acquire the property on failing to make the balance bid money. Confronted with this situation learned counsel for defaulting bidder after consulting his client has offered to match the offer of the shareholders in the company under liquidation as well as Mr. Omair Iqbal, the second highest bidder. Obviously matching the offer is of no consequence since he has already defaulted in making the payment of balance sale consideration despite the fact that from **21.1.2021** when his highest offer was accepted by the Official Assignee he knew it would be a matter of only 15 days but he managed to get two months' time on the pretext of pendency of Official Assignee's **Reference No.03 of 2021** before the court for acceptance of his bid.

6. Be that as it may, both the parties have agreed to re-check their position to compete and enhance their bid. However, to qualify to the contest, the applicants who have offered **Rs.23,25,00,000/-**

are directed to first deposit a pay order in the sum of **Rs.23,25,00,000/** and the defaulting bidder M/s Al-Baraka Apparel to deposit a pay order in the sum of **Rs.100,00,000/-** (Rupees One Crore) with the Official Assignee on **02.06.2021** at **10:30 am**. The Official Assignee after receiving pay orders will start bidding afresh among the two contestants and as and when the final bid is struck, the Official Assignee shall give three days' time in writing to highest bidder to deposit the additional amount of accepted offer over and above **Rs.23,25,00,000/-**. In case of failure, the second bidder will be allowed to deposit his difference of bid value within 48 hours after three days. In case of failure of M/s Al-Baraka Apparel to enhance the offer, the offer of **Rs.23,25,00,000/-** shall be treated as highest bid as accepted by the Court and no fresh Reference would be required since the pay order will already be available with the Official Assignee.

7. Before parting with this order, I must take note of performance of the office of the Official Assignee and recommend some correcting measures to avoid innocent failures of Official Assignee in discharging his duties particularly when Millions of rupees are involved in the transaction. Are we not able to guess what was the profit earned by the defaulting bidder on **Rs.10,68,00,000/-** in three months' time from the date of acceptance of his bid by Official Assignee on **21.01.2021** to the date of pay order prepared on **27.4.2021** after more than 49 days of acceptance of bid by Court on **09.3.2021** at the option of highest bidder himself. Irrespective of it, on perusal of court file, I have noted that Official Assignee's **Reference No.03 of 2021** for confirmation of highest bid received by him on **21.1.2021** was filed after five days on **26.1.2021** without any application for urgent hearing and orders in the chamber by the

Court. Mere presentation of Reference No.03/2021 on **26.1.2021** was not enough discharge of the duty of Official Assignee. There is no noting of Additional Registrar on **Reference No.03/2021** to place the same in court for orders. Since the defaulting bidder was the beneficiary of the delay and inaction of the Official Assignee was in his favour he did not file application for urgent hearing of **Reference No.03/2021** until **02.3.2021**. It was the defaulting bidder himself who after one month and six days (36 days) from **21.1.2021** filed an application for urgent orders on Official Assignee's **Reference No.03/2021** and got it listed in Court on **03.3.2021** for the first time. It means the learned Official Assignee has left his Reference No.03/2021 to be pursued by the defaulting bidder and get an order of Court for the acceptance of his bid as and when he likes. Official Assignee failed to appreciate that it was a very important Reference in which an immediate order was required to meet the dead line of 15 days set by the Court in the auction notice for payment of balance sale consideration from the date of acceptance of offer of the highest bidder in an auction. Unfortunately, the highest bidder even after getting the orders of Court on Official Assignee's Reference No.03/2021 at his will, failed to make the balance payment in terms of condition No.(v) of the auction notice reproduced in para-2 above.

8. Like Reference No.03/2021, the Official Assignee filed **Reference No.4/2021** on **07.4.2021** after two weeks of deadline from the order of Court dated **09.3.2021** again without any application for urgent order on it. Then Official Assignee did not pursue it at all and after 22 days of filing of **Reference No. 04/2021**, without permission of Court, he received pay order dated **27.4.2021** from the defaulting bidder and next morning (**28.4.2021**) prepared a

Reference No.5/2021 and filed it on **29-04-2021** to facilitate him.

Reference No.05/2021 is reproduced below:-

Submitted:

In continuation of Official Assignee/Official Liquidator Reference No.04/2021 dated 05.04.2021, it is respectfully submitted that the Auction Purchasers M/s Al-Baraka Apparel vide letter dated 24.04.2021 deposited 12 cheques amounting to Rs.10,68,00,000/- in the office of Official Assignee towards balance sale consideration. Copy of letter is enclosed as 'A'. **The Auction Purchasers vide another letter dated 27.04.2021 deposited pay orders of said amount of Rs.10,68,00,000/- in the office of Official Assignee/Official Liquidator**, which have been kept in safe custody till further orders of the Hon'ble Court. Copy of letter dated 27.04.2021 is enclosed as 'B'.

2. The Official Assignee/Official Liquidator respectfully submits the above facts for appropriate orders as deem fit and proper in the circumstances of the case.

Interestingly, it was again the defaulting bidder who got Official Assignee's **Reference No.5/2021** listed in court on the same day through his application for urgent hearing and orders along with orders on his dead **CMA No.111/2021** pending since **24.3.2021** as well as on a fresh **CMA No.162/2021** in which he prayed that:-

“For the reasons disclosed in the accompanying affidavit, it is respectfully prayed on behalf of the Auction Purchaser that this Honorable Court may graciously be pleased to **direct official assignee to complete the legal formalities and handover the physical possession of the Plot N.B-26/A, SITE Karachi with original title documents and transfer the title in favor of the undersigned company/ auction purchaser** nominee as early as possible in the interest of justice and equity.”

9. The sequence of events since **21.01.2021** to **29.04.2021** clearly suggests that the Official Assignee merely filed References and informed the defaulting bidder to deal with these References as he likes as if everything has otherwise happened perfectly according to law. The defaulting bidder after default handled all the References filed by the Official Assignee the way he liked but he did not comment

on Official Assignee's **Reference No.4/201** which was never listed for order in Court for the obvious reason that nobody pursued it from the office of Official Assignee and it was against the interest of the defaulting bidder. Can we believe that Official Assignee's **Reference No.4/2021** was not in the knowledge of the highest bidder?

10. It may be emphasized that the time frame given in the auction notice for payment of balance sale consideration by the highest bidder has to be applied as law of limitation and there is hardly any chance to condone non-compliance of time bound condition of auction by the highest bidder. The Official Assignee's References are not supposed to be an excuse for unnecessarily extending the time for the highest bidder to his advantage. The highest bidder once failed to meet the deadline for payment of balance sale considerations he loses all rights or claims on the property for which he has given the bid. Such failure of highest bidder automatically creates right in favour of second highest bidder and other bidders who participated in the auction to participate in fresh auction and they could increase their offer which was not possible for them on the condition of payment of balance within 15 days from the acceptance of their bid. Therefore, on default the earnest/ token money of 25% paid on the spot should have been forfeited. The case in hand is the worst example of extension of time in violation of condition Nos.(vi) and (vii) by misuse of the office of Official Assignee since from the date of acceptance of final bid on **21.01.2021** the Official Assignee was never interested in doing anything.

11. The above facts reflect that apparently the Official Assignee was in the hands of defaulting bidder. It was for the defaulting bidder to decide when the Official Assignee is to file **Reference No.3/2021** for acceptance of his bid and on what date it should be placed in Court

for order. Had the defaulting bidder not filed an application on **02.3.2021**, **Reference No.3/2021** could have still been pending? Then Official Assignee like his Reference No.3/2021 filed **Reference No.4/2021** after lapse of 15 days. It should have been filed on **25.03.2021** and again he did not pursue it. The defaulting bidder got **Reference No.5/2021** listed for order on the same day through an application for urgent hearing/ order alongwith an application (**CMA No.162/2021**) for immediate direction to Official Assignee to hand over the property in question and title documents to him.

12. The sequence of events and conduct of defaulting bidder since **21.01.2021** clearly suggests that the Official Assignee merely filed References and informed the defaulting bidder to deal with these References in court at his convenience or do not deal with it at all, as the defaulting bidder did not file his comments on **Reference No.4/2021** nor the same were listed in Court until **Reference No.5/2021** was handed over to the defaulting bidder to get it fixed in Court as and when he likes. Can we believe that Official Assignee's **Reference No.4/2021** was not in the knowledge of the defaulting bidder?

13. The above facts raise several questions which reflect adversely on the reputation of the office of the Official Assignee. Some of these questions are:-

- (i) Why the Official Assignee did not pursue all of his References himself and particularly **Reference No.4/2021** filed on **05.4.2021** seeking forfeiture of money paid by the defaulting bidder on account of his default?
- (ii) Why Official Assignee received pay orders from the defaulting bidder without permission of court when he knew an application of defaulting bidder for extension of time was still pending in court?

- (iii) Why the Official Assignee did not mention in **Reference No.5/2021** that these pay orders have been received by him even after more than 30 days' of the time it was due on acceptance of bid by the court since **9.03.2021**?
- (iv) Why the Official Assignee accepted pay order dated **27.04.2021** after default and did not return the pay order to the bidder and prepared **Reference No.5/2021** immediately in continuation of un-attended **Reference No.4/2021**?
- (v) And how and why Reference No.5 was considered to be in continuation of Reference No.4/2021?

14. In the above circumstances, the performance of Official Assignee has adversely affected the creditors of the company under liquidation. Be that as it may, to avoid any mischief in the office of Official Liquidator it is hereby ordered that from today (**27.5.2021**) onward in all the cases of sale of the properties by the **Nazir** or **Official Assignee**, once the highest bid is accepted, the Official Assignee should file a Reference within **48 hours** for confirmation of highest bid and such Reference should be accompanied by an application for urgent hearing of the said Reference for order on the same day in chamber of the company Judge. The application for urgent hearing by the Official Assignee's Reference should always referred to the **condition Nos.(v), (vi) and (vii)** of the auction notice, as it is always part of auction notice, whereby the highest bidder is supposed to make the payment of entire balance only within 15 days. Any slackness on the part of Official Assignee/Official Liquidator in future, the Court will take judicial notice of it at its own and/or on complaint by the creditors and/or participants of auction which may entail serious consequences for the Official Assignee.

JUDGE