

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

Special High Court Appeal No.288 of 2018

PSRM Steels Private Limited
Versus
Askari Bank Limited and others
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Date of hearing: 21.12.2023

Mr. Ghulam Rasool Korai, Advocate for the Appellant.

Mr. Bahzad Haider, Advocate for Respondents No.1 to 5.
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J U D G M E N T

Muhammad Shafi Siddiqui, J.- This appeal under Section-22 of the Financial Institutions (Recovery of Finance) Ordinance, 2001 was filed by the appellant (PRSM) being one of the auction participants which auction process was not materialized and the reasons thereof formed the subject matter of the impugned order dated 28.03.2018 hence this appeal.

2. We have heard the counsel and perused record.

3. Brief facts of the case are that in compliance of a decree passed in a banking suit execution application sought attachment and sale of the mortgaged land and factory of the J.D, that is Megna Steel (Pvt.) Limited (MS) and two others. The loan amount was secured not only by the mortgaged land and factory but also hypothecation of movables available including plant and machinery. The execution was allowed on 07.10.2016 and the Nazir was directed to attach and sell out the properties as per the provisions of banking laws. The valuation certificate was obtained by Nazir from RBS Associates (Pvt.) Limited and report was made available. The market value assessed as Rs.652,153,475/-, whereas, the Forced Sale Value was Rs.423,899,759/-. The sale

proclamation was then prepared for public auction. The auction took place on 11.12.2017 on which date the appellant participated and came out as a highest bidder with an offer of Rs.485,000,000/- for the properties identified in the sale proclamation. The Nazir submitted its report on 18.12.2017 for appropriate orders.

4. The process was intervened through an application of another participant of the auction that is Unique Trading Company (UTC). The application bearing CMA No.577/2017 filed on 21.12.2017, by the UTC being the second highest bidder at the auction that took place on 11.12.2017. The said participant intended to enhance its bid to Rs.550 million on the count that sale proclamation has no clarity about sale of both moveables and immovables. It is claimed that at the time of auction this offer was made but could not be fulfilled on account of Order-XXI Rule-84 CPC which require a minimum of 25% of the amount so offered and hence the Nazir did not allow him to enhance. This stance of UTC was disputed by the PRSM. By virtue of an order dated 17.01.2018 on the aforesaid CMA of UTC, the amount of Rs.550 million was allowed/ordered to be deposited with the Nazir without prejudice to the rights of others. Out of the said amount, 75% of it was later released back and withdrawn by UTC as until such stage only 25% could be deposited and not the entire amount which could have been deposited on its confirmation. Some of the J.Ds also objected to the sale of the property at the price offered by the PRSM as by that time a better offer was available before the previous offer could be materialized. Later the decree-holder filed objections to the Nazir's report dated 18.12.2017 on the same proposition and also that the amount offered was less than the liability of the judgment-debtor.

5. The terms of the sale proclamation were such that the court reserved the right to reject any offer without any reason if the offers (as offered) are not the realistic price close to market value. Consequently, on being satisfied, auction process scrapped for the reasons assigned by the banking court; the order was passed on several counts such as (a) the sale proclamation did not disclose the “entire assets” which includes plant and machinery as well; (b) the sale proclamation did not mention the reserved price of the properties (movable also); (c) in view of the higher offer by one of the participants; and (d) the sale proclamation is to be drawn-up after notice to decree-holder and judgment-debtor. We approve all the above grounds as they are inclusive of all such grounds which form material irregularity and valid for scraping the process of auction, for a fresh one.

6. The said order of re-auction was impugned in these proceedings on the count that one of the unsuccessful bidders offered Rs.550 million after ten days of the auction and that the judgment-debtor on 29.12.2017, that is after 18 days, offered repayment of Rs.692.516 million in installments.

7. The appellant could hardly be considered to have a case for interference as on the counts as being highest bidder; no vested right could be assumed at such stage;; even the acceptance of an offer is not a vested right which has to pass through the rigorous of Order-XXI Rule-89/90 CPC etc. The appellant, merely on the strength of a highest bidder, cannot insist for acceptance of its offer and/or confirmation when the material available before the court, as shown above, was sufficient to justify the order of re-auction of the properties both moveable and immoveable which have been ordered to be highlighted in the sale proclamation to

fetch the maximum amount. In terms of sale proclamation, the discretion vest with the Court either to accept or refuse bid(s) subject to valid reasons. The second highest bidder moved to court within three days of the reference of the Nazir seeking an order on the offer of the appellant which was never materialized and in fact the second highest bidder objecting the acceptance of the appellant has deposited the entire amount of Rs.550 million and only later 75% of it was allowed to be withdrawn being not the requirement of law, at the relevant time. The difference between two offers was Rs.65 Million, which considering the entire offer is a big difference.

8. The appellant has not been able to show if any vested right could have accrued. Merely on account of offering the highest amount that is before it could be accepted in a reference could not be materialized as even after such acceptance it has to pass through rigours of Order XXI Rule 89/90 etc. and thus unless and until it is confirmed and sale certificates are issued the absolute rights could not be surfaced. No case for indulgence as such is made out, the appeal is dismissed.

9. These are the reasons of our short order dated 21.12.2023.

Dated:- 29.12.2023

JUDGE

JUDGE

Ayaz Gul