

[2014] 13 S.C.R. 1

MANOJ I NAIK & ASSOCIATES

A

v.

OFFICIAL LIQUIDATOR

(Special Leave Petition (Civil) Nos. 34782-34783 of 2012)

B

OCTOBER 28, 2014

**[DIPAK MISRA, R. F. NARIMAN AND
UDAY UMESH LALIT, JJ.]**

Companies Act, 1956 – Auction sale of properties owned by liquidated company – Price fixation – Judicial intervention – Held: When properties of a company under liquidation are sold, there has to be a proper auction, a fair one – It must fetch the maximum price – It takes care of statutory dues, dues of the workmen and the creditors – It has its own public character – In any case, it cannot be allowed to be sold for a song.

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Ram and Shyam Company v. State of Haryana
1985 (1) Suppl. SCR 541 : 1985 (3) SCC 267;
Committee of Management of Pachaiyappa's Trust v. Official Trustee of Madras and Another
1993 (3) Suppl. SCR 710 : 1994 (1) SCC 475;
Chenchu Rami Reddy v. Govt. of A. P. **1986 (1) SCR 989 : 1986 (3) SCC 391;** *Meerut Development Authority v. Association of Management Studies and Another* **2009 (6) SCR 663 : 2009 (6) SCC 171 – referred to.**

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Wayde's treatise on Administrative Law
Administrative Law, 9th Edn., H.W.R. Wade & C.F. Forsyth – referred to.

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A Case Law Reference:

1985 (1) Suppl. SCR 541 referred to Para 9

1993 (3) Suppl. SCR 710 referred to Para 11

B 1986 (1) SCR 989 referred to Para 11

2009 (6) SCR 663 referred to Para 12

CIVIL APPELLATE JURISDICTION: SLP (C) Nos. 34782-34783 of 2012.

C From the Judgment and Order dated 24-08-2012 and 30-08-2011 of the High Court of Gujarat at Ahmedabad in MCA No. 77 of 2012 in OJA No. 81 of 2004 in OLR No. 100 of 2003 and in OJA No. 81 of 2004 in OLR No. 100 of 2003 in OLR D No. 24 of 2002.

A. Saran, Sr. Adv., Amit Kumar, Ms. Rekha Bakshi, Shaurya Sahay for the Petitioner.

E Tushar Mehta, ASG, A. K. Srivastava, C. R. Singh, Shyam Divan, Shirish H. Sanjanwala, Sr. Advs., Braj Kishore Mishra, Ms. Aparna Jha, Abhishek Yadav, Ejaz Maqbool, Mrigank Prabhakar, Gaurave Agrawal, A. L. Shah, R. Shaa, P. Soma Sundaram, David Rao, Amar Dave, Pradhuman Gohil, Vikas Singh, Ms. Taruna Singh Gohil, Ms. Jaikriti Singh Jadeja, Ms. F Prabuddha Sharma, Amit Anand Tiwari, Avinash Tripathi, Shamik Sanjanwala, Kailash Pandey, Ranjeet Singh, K. V. Sreekumar, E. C. Agrawala, Ankur Saigal, Mahesh Agarwal, Vivek Singh for the Respondent.

G The Judgment of the Court was delivered by

H **DIPAK MISRA, J.** 1. The factual exposition that is capable of being encapsulated in a real small compass, has, with some passage of time and turn of events, grown into a colossal structure having the effect potentiality to amaze and

perplex any prudent man. The chronology of events pyramids A
a gradual financial structure, making it limp id how on certain
occasions properties are sold for a song in so called sales
made in the proceedings under the provisions of the
Companies Act, 1956 (for brevity 'the Act') and how with some
intervention the said competitors metamorphose themselves B
into different incarnations, and the roses on the table turn into
pearls and diamonds in the private closets. To put it succinctly,
the price fixed at Rs.6.25 crores for 291 plots has fetched, by
the intervention of this Court, Rs.70 crores for 113 plots. It is
not change of heart, but the price reality that gets manifest. C
Not for nothing it has been said, "money can solve the problems
concerned with money". The large amount of money, we are
inclined to think, would solve the problems of the company in
question. D

2. The short narration. A company, namely, M/s Vitta Mazda Ltd. went into liquidation and on 21.02.2002, the High Court of Gujarat directed the Official Liquidator to put up the properties of the company in liquidation (except those for which applications are pending before the said Court for regularisation of transactions) to auction for sale. Thereafter many an order was passed. On 18.12.2004, the learned Company Judge, by taking into consideration many aspects, declined to accept the report of the Official Liquidator for acceptance of the offer made before the sale Committee. An appeal was preferred being O.J. Appeal No. 81 of 2004, wherein the Division Bench of the High Court on 30.08.2011 passed the following order: E
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"1. The present appeal arises against the order dated G
18.12.2004 passed by the learned Company Judge in
OLR No. 100 of 2003, whereby the learned Company
Judge has not accepted the report of the OL for
acceptance of the offer made before the Sale Committee. H

A 3. It is an admitted position that the appellant was one of
the offerers, who submitted the highest offer before the
Sale Committee and when the report was made by the
OL for approving the offer accepted by the Sale
Committee subject to approval of the company Court,
B the learned Company Judge found that it would not be a
case for acceptance of the offer and, therefore, rejected
the report submitted by the OL.

C 5. Apart from the above, even if the matter is to be
considered for the test of exercise of the judicial discretion
exercised by the learned Company Judge, it appears
that the learned Company Judge, at paragraph 5,
D recorded that the valuation made by the Bank of Baroda
of the property is much more than the offer submitted by
the appellant. If the said aspect is further considered, it
appears that the offer of the appellant was Rs. 1.03 crore,
whereas it is a part of the record of the Sale Committee's
proceedings that as per Bank of Baroda, the valuation
of the property was Rs. 6.25 crore. It has been stated
E that there was also another report, which was shown to
the Court.

F 6. Be that as it may, even if it is considered that the offer
of the bank of Baroda was of Rs. 6.25 crore as per the
valuation report available and the highest offer was of
Rs. 1.03 crore coming on record and under these
circumstances, if the learned Company Judge found it
proper not to accept the offer by confirming the sale, such
an exercise cannot be said to be erroneous. On the
G contrary, the exercise would be in the larger interest of
the corpus of the company.

H 7. Additionally the learned Company Judge, in the
impugned order, has also recorded the fact that the total

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chunk of property comprises of various plots of different characteristics namely; that on some plots, there were encroachments, for some plots, there were litigations and some plots were clear. Therefore, the learned Company Judge found that if the properties are sold as it is, comprising of all the plots simultaneously, it may create complications and, therefore, the learned Company Judge directed the OL to prepare a list of the plots, which were not occupied by anyone and in respect of which, there was no dispute or litigation and thereafter to undertake the process to sell and dispose of the plots at a later stage. In view of the above, if the property is segregated into various compartments of clear property, property with clog and/or property with encroachment, while disposing of the immovable properties, it would be rather in the interest of the company, since the clear property is bound to fetch higher price in comparison to the other two properties namely; with clog in the title and/or with encroachment or otherwise.”

3. When the matter was listed on various dates, it was thought it appropriate that there should be a proper auction and, accordingly, the following order came to be passed on 02.07.2014:-

“This Court, while issuing notice on 02.11.2012 had passed the following order:

“Learned senior counsel appearing for the petitioner submits that the petitioner is willing to match the offer of Rs.6.25 crores made by the Bank of Baroda. Submission recorded.”

Thereafter, the matter has been adjourned and certain applications have been filed for impleadment, which are allowed.

A Mr. Ahmadi, learned senior counsel appearing for the applicant M/s. SNTD Enterprises in IA 6-7/2013 has submitted that the applicant therein is prepared to pay Rs. 25 crores for the property that was sought to be auctioned.

B Not intending to lag behind, Mrs. Meenakshi Arora, learned senior counsel appearing for M/s. Star and Associates in IA No.10-11/2013 submitted that the applicant herein is prepared to pay Rs.30 crores.

C Mr. Pradhuman Gohil, learned counsel appearing for Mr. Ranjitsinhji N. Parmar in IA 8-9/2013 equalises the offer given by Mr. Ahmadi, i.e. Rs. 25 crores.

D Mr. Sharan, learned senior counsel appearing for the petitioner has expressed the skepticism to the offers made by the applicants. It is his submission that if they intend to show their bona fides, they should deposit at least Rs.10 crores before this Court as the petitioner is also inclined to deposit Rs.10 crores.

E In view of the aforesaid submission, we direct that the applicants, whose names have been mentioned hereinabove as well as the petitioner shall deposit a sum of Rs. 10 crores each by way of bank draft drawn in favour of the Secretary General of this Court within three weeks from today. Needless to say that this amount may be treated as off-set price and thereafter this Court may think of going through the bidding process, if required. Let it be stated the offer is made keeping in view the auction notice. Nothing more, nothing less. After the deposit of the amount, the same shall be kept in a nationalised bank in a short-term interest bearing account.

List on 11.08.2014.”

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4. After the said order was passed, certain deposits were A
made by 3 firms/companies. Regard being had to the said
situation, on 19.08.2014, after referring to the earlier orders,
the following order came to be passed :-

"We have been apprised by the Registry that deposits B
which were directed by this Court have already been
made and, therefore, all the parties have complied with
the order. In view of the aforesaid position, we direct the
Official Liquidator to proceed with the fresh auction. The
factum of auction shall be advertised in local Newspapers C
one in English and another in vernacular language. That
apart there should be an advertisement in any daily
National Newspaper having adequate circulation in the
country, regard being had to the issue involved in such a
matter. The upset price shall be fixed at Rs. 10 crores. D
The advertisement shall be issued within a period of
two weeks from today. The bidding process shall be
completed within four weeks therefrom. As far as M/s
Star and Associates is concerned, if they offer a bid less
than Rs.30 cores that bid shall not be accepted but their
claim of amount shall be considered subject to further
orders of this Court. Similarly, as far as Mr. Ranjitsinh
Parmar is concerned, his bid for less than Rs.25 crores
shall not be considered but he would be entitled to claim
refund of the amount subject to further orders of cost. E
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The Managing Director of M/s. SNTD Enterprises on
whom cost of Rs. 5 lakhs was imposed shall remain
personally present on the next date of hearing if the cost,
as directed, is not deposited before the Registry of this G
Court. In case the deposit is made, an affidavit shall be
filed and he need not appear in person. Needless to
emphasise that in the event of non-deposition, he shall
personally appear and this Court may consider passing H

A appropriate orders in that regard.

B We may add that anyone who intends to bid, he has to deposit a sum of Rs.10 crores as earnest money so that he can claim parity with the three contenders who are before this Court. Barring what we have stated, the other conditions in the initial notice for auction shall remain the same. As the three bidders have deposited Rs.10 crores, they need not to deposit earnest money, as the deposition of that amount before this Court tantamounts to deposition of earnest money.

C The place of auction will be at Ahmedabad. There will be stay of further proceedings before any Court relating to the property involved in this case.

D The Registry shall keep the deposited amount in F.D.Rs. in a nationalised bank in a short-term interest bearing account."

E 5. In the meantime, certain unwarranted, unhappy and uncalled for situation took place. The Official Liquidator filed a report before the learned Company Judge seeking permission to exclude certain plots from the original list and, accordingly, the learned Company Judge granted the extension of time. In our considered opinion, when the matter was subjudice before this Court, the learned Company Judge should not have dealt with the same regard being had to the fundamental concept of judicial discipline. Be that as it may, the Official Liquidator issued an advertisement in respect of 291 plots wherein it was clearly mentioned that the sale had been confirmed by the learned Company Judge in respect of 87 plots and the said confirmations were the subject matter of appeals before the Division Bench which were subjudice. Similarly, it was also mentioned that the order of *status quo* was operational in respect of 10 plots and the said order of *status quo* had been

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passed by a coordinate Bench of this Court. It was also postulated therein that certain plots had been encroached upon and certain plots were subject matter of registered sale deeds, though no application had been filed before the Court for validation. In course of hearing of these petitions, we have been apprised that applications for validation are pending before the learned Company Judge.

6. On a perusal of the advertisement, it is clear as crystal that 113 plots admeasuring 91,960.70 sq. mtrs. forming a part of Annexure-A/I of the Corrigendum was absolutely free and available for auction.

7. At this juncture, it is pertinent to mention that the bids which were offered in respect of the plots that were put to auction were opened before us. M/s-Manoj I. Naik & Associates, the appellant herein, has offered Rs. ten crores, eleven thousand; Mr. Laxmi Narayan Garg has made an offer of Rs. 10 crores; M/s Star & Associates has offered Rs. 31 crores. It is submitted by Mr. A. Saran, learned senior counsel for the appellant, that the Official Liquidator had no authority to issue a Corrigendum or to place a clarificatory note in respect of the plots. That apart, submits Mr. Saran, the Official Liquidator has committed grave illegality and, in a way, contempt of the Court by approaching the High Court and stating that this Court had made certain oral observations which was really not correct, for everything was unequivocally stated in the order. Ordinarily, we would have proceeded to address the submissions made with emphasis by Mr. A. Saran, but as advised at present, we are refraining from doing so, for what has happened in the course of hearing.

8. Here the sad sad story begins. Mr. Tushar Mehta, learned Additional Solicitor General, while defending the stand of the Official Liquidator, though made certain efforts to justify

A his action, yet ultimately realised that it was a Sisyphean
endeavour because the action may be genuine but should not
have been undertaken. Mr. Tushar Mehta learned Additional
Solicitor General, and Mr. Gaurav Agrawal, learned counsel,
appearing for the Official Liquidator, while expressing regret
B about the steps taken by the Official Liquidator who has also
rendered unconditional apology, submitted that the prices of
the land have gone up and there is a valuation report by the
Gujarat Industrial and Technical Consultancy Organisation Ltd
(GITCO) which has estimated the price at Rs. 66,15,22,000/-
C in respect of total freehold land available for sale, that is, 113
plots.

9. The said valuation report compelled us to think in a
different way and impelled us to recapitulate certain authorities
D of this Court. In *Ram and Shyam Company Vs. State of
Haryana*¹, the Court observed thus:

“12. ...Owner of private property may deal with it in any
manner he likes without causing injury to any one else.
E But the socialist or if that word is jarring to some, the
community or further the public property has to be dealt
with for public purpose and in public interest. The marked
difference lies in this that while the owner of private
property may have a number of considerations which may
F permit him to dispose of his property for a song. On the
other hand, disposal of public property partakes the
character of a trust in that in its disposal there should be
nothing hanky panky and that it must be done at the best
price so that larger revenue coming into the coffers of
G the State administration would serve public purpose viz.
the availability of larger funds. This is subject to one
important limitation that socialist property may be
disposed at a price lower than the market price or even

H ¹ (1985) 3 SCC 267

for a token price to achieve some defined constitutionally A
recognized public purpose, one such being to achieve
the goals set out in Part IV of the Constitution. But where
disposal is for augmentation of revenue and nothing else,
the State is under an obligation to secure the best market
price available in a market economy. An owner of private B
property need not auction it nor is he bound to dispose it
of at a current market price. Factors such as personal
attachment, or affinity, kinship, empathy, religious
sentiment or limiting the choice to whom he may be willing C
to sell, may permit him to sell the property at a song and
without demur. A welfare State as the owner of the public
property has no such freedom while disposing of the
public property. A welfare State exists for the largest good
of the largest number more so when it proclaims to be a D
socialist State dedicated to eradication of poverty. All
its attempt must be to obtain the best available price while
disposing of its property because the greater the
revenue, the welfare activities will get a fillip and shot in
the arm. Financial constraint may weaken the tempo of E
activities. Such an approach serves the larger public
purpose of expanding welfare activities primarily for which
the Constitution envisages the setting up of a welfare
State."

10. In the aforesaid case, the Court held auction in Court F
in respect of some quarries relating to minor minerals. The
appellant therein who initially had given an offer of Rs.5.5 lakhs,
eventually offered Rs.25 lakhs. Taking note of the state of affairs,
the Court observed:

"6. Shock and surprise was visible on the face of each G
one in the Court. Shock was induced by the fact that
public property was squandered away for a song by
persons in power who hold the position of trust. Surprise H

A was that how judicial intervention can serve larger public interest. One would require multi-layered blind-fold to reject the appeal of the appellant on any tenuous ground so that the respondent may enjoy and aggrandize his unjust enrichment. On this point we say no more.”

B 11. In **Committee of Management of Pachaiyappa's Trust Vs. Official Trustee of Madras and Another**², the Court placing reliance on paragraph 12 in **Ram & Shyam Company (supra)** and Para 27 in **Chenchu Rami Reddy V. Govt. of A.P.**³, opined thus:

C “28. The aforesaid observations in the context of public property and property belonging to religious and charitable endowments and institutions would equally apply to trust property as in the present case.”

D 12. In **Meerut Development Authority V. Association of Management Studies and Another**⁴, after referring to number of decisions including **Ram and Shyam Co. (supra)**, the Court reproduced a passage from Wayde’s treatise on Administrative Law⁵, which is as follows:

E “The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may

² (1994) 1 SCC 475

³ (1986) 3 SCC 391

⁴ (2009) 6 SCC 171

H ⁵ Administrative Law, 9th Edn., H.W.R. Wade & C.F. Forsyth

do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. So a city council acted unlawfully when it refused unreasonably to get a locally rugby football club use the city's sports ground, though a private owner could of course have refused with impunity. Nor may a local authority arbitrarily release debtors, and if it evicts tenants, even though in accordance with a contract, it must act reasonably and 'within the limits of fair dealing'. The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good." A
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13. At this juncture, we are obliged to state that in the case at hand, we are dealing with properties owned by a Company under liquidation and there has been price fixation by the Company Court. GITCO has estimated the valuation in praesenti. It is not in dispute, as per the orders passed by the Company Court as well as the Division Bench in Company Appeal and as understood by this Court, 291 plots were to be put to auction and for the total number of plots the prices were offered by the bidders who had shown interest before this Court to bid and this Court had fixed the reserve price at Rs. 10 crores. Counsel for the parties on 02.07.2014 had gone to the extent of saying that they were prepared to offer Rs.25-30 crores in the auction and we have already mentioned offers have come in the sealed cover. D
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14. Ordinarily, what we would have done is absolutely another matter. There can be no speck of doubt that the properties of a company under liquidation when sold, there has to be a proper auction, a fair one. It must fetch the maximum price. It takes care of statutory dues, dues of the workmen and the creditors. It has its own public character. In any case, it cannot be allowed to be sold for a song. The estimated price G
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A given by GITCO is more than Rs.66 crores for 113 plots, which are free. Therefore, we thought it seemly to ask the learned counsel appearing for the parties, if they are agreeable for open auction by giving their offers before this Court.

B 15. Mr. A. Saran, learned senior counsel, Mr. Braj Kishore Mishra, learned counsel, Mr. Vivek Singh, learned counsel and Mr. Amar Dave, learned counsel, conceded to the said suggestion. In the High Court initially Rs.6.25 crores had been offered, and we had fixed the reserve price at Rs. 10 crores
C and, to test the *bona fide* of the bidders, we had directed them to deposit Rs. 10 crores each before the Registry of this Court which has been done. Now the initial thought, graduated to a shock. When auction commenced, Mr. Braj Kishore Mishra, learned counsel, along with Mr. Vivek Trivedi, learned counsel,
D after obtaining instructions from Mr. S.D. Verma, a partner of M/s Star & Associates, informed the Court that they are willing to offer Rs. 31 crores for 113 plots which are free. Determined not to lag behind, Mr. A. Saran, being instructed by Mr. Amit Kumar, learned counsel, on behalf of the petitioner, ultimately
E raised the figure upto Rs.65 crores. Be it stated, we had requested the bidders to hike their price by Rs.5 crores so that the auction becomes real and not unnecessarily time-consuming. Mr. A. Saran, learned senior counsel, Mr. Braj Kishore Mishra, learned counsel, Mr. Vivek Singh, learned
F counsel and Mr. Amar Dave, learned counsel, co-operated. Eventually, Mr. Braj Kishore Mishra, learned counsel, appearing for M/s Star & Associates enhanced the price to Rs. 70 crores. Mr. A. Saran, Mr. Vivek Singh and Mr. Amar Dave did not think, as instructed by their respective clients, to bid further. Thus,
G we find that the report submitted by GITCO appears to be correct. That is a redeeming feature to pardon the Official Liquidator and we do so.

H 16. In view of the aforesaid, we direct M/s. Star and

Associates to deposit a sum of Rs.20 crores by the end of A
November, 2014 and another Rs.40 crores by March 15, 2015
before the Registry of this Court. The amount shall be
deposited in an interest bearing fixed deposit in a UCO Bank,
Supreme Court Compound, New Delhi. After Rs.60 crores
are deposited, Rs. 10 crores that have been deposited by the B
company before the Registry shall be added and handed over
by way of a banker's cheque to the Official Liquidator along
with interest. Needless to emphasise, if any of the directions
is not complied with or for any reason, extension is sought, C
Rs. 10 crores that has been deposited before this Court along
with interest shall stand forfeited and go to the account of the
company. This aspect is also conceded to by Mr. Braj Kishore
Mishra and Mr. Vivek Trivedi.

17. As far as deposits made by the petitioner and Mr. D
Ranjitsinh Parmar before this Court are concerned, the
deposits shall be refunded along with interest within two weeks
hence. The amount deposited by Mr. Laxmi Narayan Garg with
the Official Liquidator shall also be refunded within a week E
from today. Any earnest money that has been deposited with
the Official Liquidator shall also be refunded to the concerned
company/person.

18. At this juncture, it is appropriate to mention that the F
rest of the plots in respect of which there is an order of *status*
quo by this Court or which are subjudice before the appellate
court on the company side before the High Court, needless to
say, shall be dealt with at the subsequent date.

19. At this juncture, we are obligated to clarify that G
interlocutory applications which have been filed before this
Court can be filed before the High Court and the orders passed
by the High Court shall be filed before this Court in these
special leave petitions so that they can be appositely dealt

A with. The order of stay granted earlier, that is, directing stay of further proceedings before any Court relating to the property involved in this case, is modified to the extent indicated above.

20. Let the matter be listed for further hearing on March
B 24, 2015.

Bibhuti Bhushan Bose

Matter adjourned.