

ITEM NO.1

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

IA Nos 186866/2019 & 117057/2017

In

Civil Appeal No 13301/2015

SUBRATA BHATTACHARYA

Appellant(s)

VERSUS

SECURITIES AND EXCHANGE BOARD OF INDIA & ORS.

Respondent(s)

(With appln.(s) for appropriate orders/directions and clarification)

Date : 09-01-2020 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE HRISHIKESH ROY

For Appellant(s)

Mr. Jai A Dehadrai, Adv.
Mr. Sidharth Arora, Adv.
Mr. Raghumanju Taneja, Adv.
Mr. Sameer Shrivastva, Adv.

Mr. Somiran Sharma, AOR

For Respondent(s)

Mr. P.S. Patwalia, Sr. Adv.
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Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Mr. Akhil Abraham Roy, Adv.
Mr. Vijay Valsan, Adv.

Mr. R. Bala, Sr. Adv.
Mr. Arijit Prasad, Sr. Adv.
Mr. Abhishek Kumar, Adv.
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Mr. Aviral Kashyap, AOR

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Ms. Christi Jain, AOR

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Mr. Mohit D. Ram, AOR

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Ms. Sneha, Adv.

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Ms. Jasmine Damkewala, AOR
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Ms. Vaishali Sharma, Adv.

Mr. Deepak Bansal, Adv.
Mr. Roopak Bansal, Adv.
Mr. Ravi Tomar, Adv.

Mr. Rajinder Kumar Singh, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. S.K. Rajora, Adv.
Mr. Akhileshwar Jha, Adv.
Ms. Sandhya Sharma, Adv.

Ms. Anubha Agrawal, Adv.

Mr. Jasbir Singh Malik, Adv.
Mr. Manish Kumar Tirthpuria, Adv.

Ms. Uttara Babbar, Adv.
Ms. Bhavana Duhoon, Adv.
Mr. Manan Bansal, Adv.

Mr. Surya Kant, Adv.
Mr. Jog Singh, Adv.
Mr. Pranav Vyas, Adv.
Ms. Priyanka Tyagi, Adv.

Ms. Lalam Haolai, Adv.

UPON hearing the counsel the Court made the following
O R D E R

I.A. No.186866/2019 in Civil Appeal No.13301/2015

Issue notice to the Official Liquidator of the Delhi High Court, returnable on 24 January 2020.

In the meantime, we direct that the Official Liquidator shall not make any further disbursements in respect of the realizations pertaining to the assets of PACL Ltd.

I.A. No.117057/2017 in Civil Appeal No.13301/2015

On 17 December 2019, this Court passed the following order:

"The name of the applicant in this application is Mahadev Plantations and Parks Private Limited.

In the affidavit in rejoinder, which has been filed on behalf of the applicant, it has been stated that in the property bearing No MR 5768-16, the quotation submitted by the applicant was 73% over the reserve price fixed for the property. Hence, it has been submitted that necessarily the price offered by the applicant was also above the circle rate since the reserve price was fixed at 90% of the circle rate. Moreover, it has been submitted that the properties in the vicinity have been sold at 1% above the reserve price.

In regard to the remaining seven properties identified as MR Nos 19707-16, 6127-16, 6125-16, 6124-16, 6381-16, 6724-16, 6263-16, it has been submitted that Clause 2.7 of the terms and conditions required bidders to submit bids in multiples of 1% of the reserve price. The applicants are aggrieved by the fact that whereas according to them, bidders have been allotted other properties at 1% above the reserve price, the same yardstick has not been applied in their case. This is sought to be illustrated in a tabular chart set out in paragraph 5 of the rejoinder.

An affidavit be filed by the SEBI clarifying the position before the Court within a period of two weeks from today.

List the application on 9 January 2020."

In pursuance of the above directions, an affidavit has been filed on behalf of the SEBI. The affidavit contains the following disclosure in respect of the property which is described as MR No.5768-16:

"I say and submit that with regard to the reason for rejection, that the document seized by the CBI and handed over to the Committee pertaining to MR No.5768-16 is merely an Agreement to Sell (AoS) and on examination it was found that an AoS itself could not be a document conferring title and hence, the Committee at its 26th meeting decided that bid received for property bearing MR No.5768-16 located in Telangana be rejected."

From the above disclosure, it is evident that the only ground on which the Committee decided at its 26 meeting to reject the offer by the applicant, Mahadev Plantation and Parks Pvt Ltd was that the document purporting to be a document of title was only an agreement to sell and would not confer a complete title on the intending purchaser.

Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the applicant states that the applicant is ready and willing to take the property on an 'as is where is basis' and would not raise any objection in regard to the purported title which has been conveyed. In view of this statement, which has been made on behalf of the applicant by the learned senior counsel, Mr. Pratap Venugopal, learned counsel appearing on behalf of SEBI states that there can be no objection to the sanctioning of the sale in favour of the applicant in respect of the property bearing No MR 5768-16. We also clarify that, while issuing the certificate in

respect of the transaction, the Committee will do so on "as is where is basis" and the applicant has agreed to purchase the property on that basis. Hence, insofar as the property bearing No MR 5768-16 is concerned, we sanction the transaction in favour of the applicant.

At this stage, learned counsel appearing on behalf of the PAFL Ltd states that she has a bidder who is ready and willing to accept the property at a higher value. We are not inclined to accept the oral statement which is made at the Bar bereft of any statement on affidavit or in regard to the terms and conditions as proposed.

Insofar as the remaining seven properties are concerned which have been identified in the previous order dated 17 December 2019, the affidavit which has been filed on behalf of SEBI indicates that a decision was taken by the Committee presided over by Justice R.M. Lodha, former Chief Justice of India, that there being only a sole bidder, the Committee will reject the bid in view of the guidelines of the CVC. Hence, in regard to the remaining seven properties, the affidavit contains the following statement:

"I say and submit that Applicant bid for MR Nos.6724-16, 6381-16, 6263-16, 6127-16, 6125-16 and 19707-16 among other properties. It may be noted that Applicant had bid for 33 properties out of which, for 19 properties Applicant was the sole bidder and as mentioned hereinabove, the Committee keeping in view guidelines of CVC, decided to reject bids received for the properties where only a single EMD was received as lack of competition was observed, there being only a sole bidder in such cases and hence the chances to arrive at a fair price of the property are minimal."

The above decision of the Committee cannot be faulted. Hence, we reject the request of the applicant to act on the basis of the bid submitted for the remaining seven properties.

The interlocutory application is accordingly disposed of.

Mr. Pratap Venugopal, learned counsel appearing on behalf of SEBI has agreed to the suggestion which emerged during the course of the hearing that all the applications filed in these proceedings should be uploaded on the website of SEBI for the information of all concerned together with the replies and pleadings that may be filed therein.

(Chetan Kumar)
A.R. -cum-P.S.

(Saroj Kumari Gaur)
Court Master