2026 INSC 909

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9228–9231 OF 2013

Lakshmi Mohan (Dead)
Through LRs. & Anr. **... Appellants**

Versus

M/s. Airtech Projects Engineers
Pvt. Ltd. & Anr. **... Respondents**

WITH

CIVIL APPEAL NO(S). OF 2026
(@ SLP (C) NO(S). 1441-1446 OF 2014)

M/s. Airtech Projects Engineers
Pvt. Ltd. **... Appellant**

Versus

Mrs. Lakshmi Mohan (Dead)
Through LRs. & Ors. **... Respondents**

AND

CIVIL APPEAL NO. OF 2026
(@ SLP (C) NO. OF 2026)
(@ Diary No. 31322 OF 2018)

The Chief Manager and
Authorized Officer **...Appellant**

Versus

M/s Airtech Projects Engineers
Pvt. Ltd. & Ors. **...Respondents**

JUDGMENT

ALOK ARADHE, J.

1. Delay condoned.

2. Leave granted in both the Special Leave Petitions.

3. These appeals impugn the common judgment dated 22.03.2013, rendered by the High Court[1] in a batch of Writ Petitions[2]. Mrs. Lakshmi Mohan, the auction-purchaser no. 1, since deceased and now represented by her legal representatives including her son Mr. M. Premkumar, auction-purchaser no. 2, preferred Civil Appeal Nos. 9228-9231 of 2013. M/s. Airtech Projects Engineers Pvt. Ltd. (the borrower) has preferred Civil Appeals @ Special Leave Petition (Civil) Nos. 1441-1446 of 2014, while the United Bank of India, which merged with Punjab National Bank in 2020 (the Bank) has approached this Court by way of Civil Appeal @ Special Leave Petition @ Diary No. 31322 of 2018. As a common question touching the validity of the bid submitted by the auction purchasers arises for consideration in all

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[1] **The High Court of Judicature at Madras**
[2] **Writ Petition Nos. 24241-24244, 32610 and 32611 of 2012**

these appeals, the same were heard together and are being decided by this common judgment.

FACTUAL MATRIX

4. The facts giving rise to these appeals, stated in brief, are as follows. The borrower availed of a cash-credit facility from the Bank. The borrower failed to repay the loan, as on 31.07.2008, the dues in the account were Rs.88,52,741/- (Rupees Eighty-Eight Lakhs Fifty-Two Thousand Seven Hundred Forty-One only) against the sanctioned limit of Rs.85 lakhs. Its account was thus, declared as a Non-Performing Asset (NPA) by the Bank. On 01.08.2008, the Bank issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the Act') calling upon the borrower to pay a sum of Rs.88,52,741/- (Rupees Eighty-Eight Lakhs Fifty-Two Thousand Seven Hundred Forty-One only) within sixty days.

5. The secured asset, namely land measuring an approximate of 4900 square feet with building thereon consisting of ground floor and first floor bearing Door

Number 32, McNichols Road, Chetpet, Chennai, was valued on 14.10.2008, for purposes of proceeding under the Act. On 12.11.2008, the Bank issued a possession-cum-sale notice, fixing 04.01.2009, a Sunday, as the date of sale. Thereafter, a corrigendum subsequently substituted 05.01.2009 as the revised date.

6. The borrower assailed the notice by way of a securitization application (SA) under the Act before the Debts Recovery Tribunal-II, Chennai (DRT). By an order dated, 29.12.2008, the DRT allowed the SA and quashed the possession-cum-sale notice on the ground that the sale was fixed on a Sunday, while granting the Bank liberty to issue a fresh notice. Aggrieved, the Bank filed CRP No. 501 of 2009, contending that the order has been passed without notice to it. The aforesaid order dated 29.12.2008 was set aside by the High Court on 21.04.2009 and the matter was remitted to the DRT.

7. On 18.03.2009, the Bank issued a fresh possession-cum-sale notice, fixing 24.04.2009 as the date of auction. Clause 7 thereof required intending bidders to submit their offers on or before 23.04.2009, accompanied by a demand draft or pay order in favour of the Bank towards earnest money deposit (EMD) of Rs.21,50,000/- (Rupees Twenty-One Lakhs Fifty Thousand only), and stipulated that an offer unaccompanied by the EMD would be rejected. The borrower challenged this notice as well, by way of a fresh SA before the DRT. DRT, by order dated 21.04.2009 granted a conditional stay, however, permitted the Bank to proceed with the auction with a direction not to confirm the same till 21.05.2009.

8. The auction-purchasers submitted their bid on 23.04.2009 along with EMD of Rs.21,15,000/- (Rupees Twenty-One Lakhs Fifteen Thousand only), a shortfall of Rs.35,000/- (Rupees Thirty-Five Thousand only) from the stipulated sum. At the auction held on 24.04.2009, the auction purchasers' offer of Rs.2,17,40,000/- (Rupees Two Crores Seventeen Lakhs Forty Thousand only) was the highest, and they were declared the successful bidders.

9. On the same day, the auction-purchasers deposited a further sum of Rs.33,20,000/- (Rupees Thirty Three

Lakhs Twenty Thousand only), bringing the total deposit to Rs.54,35,000/- (Rupees Fifty Four Lakhs Thirty-Five Thousand only), constituting twenty-five percent (25%) of the bid amount. By order dated 01.10.2009, the DRT dismissed the borrower's S.A., holding that the notice under Section 13(4) dated 12.11.2008 and possession-cum-sale notice dated 18.03.2009 had been issued in due compliance with the Act. The auction-purchasers thereafter deposited the balance sale consideration on 05.10.2009. A sale certificate was issued in their favour on 10.10.2009 and the same was registered on 15.10.2009.

10. The borrower carried the order dated 01.10.2009 in appeal before the Debts Recovery Appellate Tribunal (DRAT), which, by order dated 20.06.2011, held that the auction had not been conducted in compliance with Rule 8 (5) of the Security Interest (Enforcement) Rules, 2002 (the Rules), and was vitiated by non-compliance with the express terms of the auction notice. The appeal was accordingly allowed, and the Bank was directed to restore the possession of secured asset to the borrower.

11. Both the auction-purchasers and the Bank assailed this order before the High Court in separate writ petitions. By order dated 16.08.2011, the High Court, set aside the order of the DRAT and remitted the matter, on the ground that the memorandum of appeal before the DRAT had not raised any ground touching non-compliance with Rule 8(5) of the Rules or breach of the terms of the auction notice, thereby depriving the auction-purchasers of an opportunity to meet the case on which the DRAT's order rested. On remand, the DRAT, by order dated 31.08.2012, reaffirmed the findings recorded in its earlier order dated 20.06.2011.

12. This order also was carried before the High Court in further writ petitions, by the auction-purchasers and the Bank, which came to be dismissed by the impugned common judgment dated 22.03.2013. Hence, these appeals.

SUBMISSIONS

13. Mr. Niranjan Reddy, learned senior counsel appearing for the auction-purchasers submitted that deposit of earnest money along with the bid is neither a statutorily prescribed condition nor a mandatory one. He further submitted that the auction-purchasers had, in compliance with Rule 9(3) of the Rules, deposited 25% of the amount of sale price, and that the borrower had suffered no prejudice on this account. He pointed out that the shortfall in the EMD had not even been urged by the borrower before the DRT, that there were only two bidders in the fray, and that the other bidder also had committed an identical shortfall of Rs. 35,000/-. In these circumstances, he submitted, the irregularity was a minor technical one incapable of vitiating the auction.

14. Mr. Dhruv Mehta, learned senior counsel for the Bank submitted that the acceptance of a non-compliant bid could, at the highest, be questioned by a rival bidder, and since the only other bidder was similarly placed, no such challenge could arise. He submitted further that the auction-purchasers had deposited twenty-five percent of the bid amount on the very date of the auction, occasioning no prejudice to the borrower; that the condition requiring deposit of earnest money had been incorporated for the Bank's benefit; and that the excess sale proceed, though inadvertently retained in a non-interest bearing account, were liable to be refunded, and the Bank remained ready and willing to do so.

15. Mr. Jayanth Bhushan, learned senior counsel for the borrower submitted that in the absence of the requisite EMD, no valid bid could be said to exist at all, the deposit being a mandatory and essential condition of eligibility from which the Bank was not competent to deviate. He submitted further that the balance sale consideration, required to be paid within 15 days of the sale, had in fact been paid after a delay of nearly five months. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court[3].

16. We have considered the rival submissions and have perused the record.

ANALYSIS

17. It would be apposite, at the outset, to extract Clause 7 of the possession-cum-sale notice dated 18.03.2009: -

> "**7**. The interested purchaser bidders may send their offers for the properties described herein

[3] **Central Coalfields Ltd.** v. **SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622; Ramana Dayaram Shetty** v. **The International Airport Authority of India, (1979) 3 SCC 489** and **E. Muthurathinasabathy and Ors.** v. **Sri International and Ors., 2026 SCC OnLine SC 508.**

above in a sealed cover on or before 23.04.2009 along with Demand Draft / Pay order drawn in favour of United Bank of India payable at Chennai towards earnest money as mentioned above (Rs.21,50,000/-) to the Auhorised Officer & Chief Manager, United Bank of India, T. Nagar Branch between 9.00 am and 4.00 pm for property described above for which they may contact the undersigned at the above address. The offer without earnest money deposit will be rejected. There will be an Inter Se bidding amongst the eligible bidders on the aforesaid date of sale. The undersigned, reserves the right to accept or reject any or all the offers or adjourn postpone the sale without assigning any reason thereof. If the offer of the highest bidder is accepted the said highest bidder purchaser has to deposit immediately 25% of the sale price adjusting the amount of EMD already deposited and if he falls to deposit the same, the amount deposited towards the earnest money shall be forfeited and the property shall be sold again. The balance amount of purchase price shall be paid within 15 days of date of the confirmation of sale or within the extended period as allowed by the undersigned in writing and in default of payment within the period, the deposit and earnest money shall be forfeited and the properties shall be resold. Any other statutory dues/rates/taxes/ stamp duty/registration

> fee/miscellaneous expenses/Government dues of any authority etc. shall have to be borne by the successful highest bidder purchaser(s) exclusively and separately in the event of non happening of sale on the date and time mentioned above, the bank reserves its right for effecting sale of the above properties/ assets by private treaty.”

18. Rule 8 of the Rules deals with sale of immovable secured assets. Rule 8(7) which existed at the relevant time provides that every notice of sale shall be affixed on conspicuous part of the immovable property and may, if the authorized officer deems it fit, put on the web-site of the secured creditor on the Internet. Rule 8(6) as is applicable to the facts of this case provides for service of notice to the borrower for sale of immovable secured assets. The proviso to this Rule provides that if the sale of the secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice to be published in two leading newspapers; which shall include *inter alia*, the deposit of earnest money as may be stipulated by the secured creditor. Rule 9 of the Rules deals with time of sale, issue of sale certificate and delivery of possession etc. Rule 9(3), 9(4) and 9(5) of the Rules as applicable to the facts of the case in hand read as under:

> "**9(3)** On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.
>
> **9(4)** The balance amount of purchase price payable shall be paid by the purchaser to the authorised 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 parties.
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> **9(5)** In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequent sold."

19. It is well-settled in law that requirements in a tender notice can be classified into following two categories: (i) those which lay down the essential condition of eligibility; and (ii) the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case, the authorities issuing the tender may be required to enforce the condition rigidly whereas in other cases, it may be open to the authority to deviate from it and not to insist upon strict literal compliance of the condition[4]. It is an equally established legal proposition that any non-conformity with or relaxation in the prescribed standard allowed in case of any tenderer, if not resulting in substantial prejudice or injustice to any of the parties or to public interest in general would not be bad[5]. It is equally well-settled in law that where upon due consideration of the tender document submitted by all the tenderers on their own merits, if it is ultimately found that successful bidders had in fact substantially complied with the purport and

[4] **Poddar Steel Corporation** v. **Ganesh Engineering Works and Ors., (1991) 3 SCC 273; Om Prakash Sharma** v. **Ramesh Chand Prashar & Ors., (2016) 12 SCC 632; Central Coalfields Ltd. & Anr.** v. **SLL-SML (Joint Venture Consortium) & Ors., (2016) 8 SCC 622; Bakshi Security & Personnel Services Pvt. Ltd.** v. **Devkishan Computed Pvt. Ltd. & Ors., (2016) 8 SCC 446** and **Vidarbha Irrigation Development Corporation & Ors.** v. **Anoj Kumar Agarwala & Ors., (2020) 17 SCC 577**

[5] **G.J. Fernandez** v. **State of Karnataka & Ors., (1990) 2 SCC 488; Indian Railway Catering and Tourism Corporation Ltd. & Anr.** v. **Doshion Veolia Water Solutions Pvt. Ltd. & Ors., (2010) 13 SCC 364** and **National High Speed Rail Corporation Ltd.** v. **Monte Carlo Ltd. & Anr. (2022) 6 SCC 401**

object for which the essential conditions were laid down, the same may not ordinarily be interfered with[6].

20. In the backdrop of aforesaid well-settled principles, we may advert to the facts of the case in hand. Clause 7 of possession-cum-sale notice dated 18.03.2009 which requires the bidders to deposit EMD amount of Rs.21,50,000/- is non-statutory and has been incorporated in the possession-cum-sale notice with an object to filter out non-serious bidders. In the instant case, in response to the aforesaid notice two bidders had submitted their bids and both of them had deposited a sum of Rs.21,15,000/- (Rupees Twenty-One Lakhs Fifteen Thousand only) instead of Rs.21,50,000/- (Rupees Twenty-One Lakhs Fifty Thousand only). The Bank entertained and considered both the bids.

21. The bid of the auction-purchasers which was submitted on 23.04.2009 for a sum of Rs.2,17,40,000/- (Rupees Two Crores Seventeen Lakhs Forty Thousand only) was found to be the highest. The auction-purchasers in accordance with Rule 9(3) of the Rules deposited 25% of

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[6] **B.S.N. Joshi & Sons Ltd.** v. **Nair Coal Services Ltd. & Ors., (2006) 11 SCC 548** and **National High Speed Rail Corporation Ltd.** v. **Monte Carlo Ltd. & Anr. (2022) 6 SCC 401**

the amount of bid price inclusive of EMD on the next day i.e., 24.04.2009. The auction-purchasers were statutorily obliged to comply with the 25% mark of the sale price on the same day which was made good. Therefore, any anterior shortfall in deposit of EMD pales into insignificance, the moment the 25% of the sale price was deposited. Thus, the non-conformity of the bid of the auction-purchasers insofar as it pertains to deposit of EMD has not resulted in any prejudice or injustice to the other bidder much less to the borrower. Therefore, the shortfall in deposit of EMD as required by Clause 7 of possession-cum-sale notice dated 18.03.2009 does not affect the validity of the bid of the auction-purchasers in any manner.

22. For the reason stated supra, the contention of the borrower that the deposit of EMD is an essential eligibility condition does not deserve acceptance. Insofar as the submission of the borrower that the balance sale consideration was paid after a period of 15 days, is concerned, suffice it to say that the aforesaid plea was neither taken before the DRT nor before the DRAT.

Clause 7 explicitly states that the balance amount shall be paid within fifteen days or within the extended period as allowed by the undersigned i.e., the Bank. It is also noteworthy that the borrower himself raised pleas to forbear the auction-purchasers from depositing the balance sale consideration. One of the auction-purchasers, namely, Mr. M. Premkumar, in his affidavit dated 02.09.2012 in W.P. Nos.24241-24244 of 2012, stated that when they approached the Bank to pay the balance of seventy-five percent (75%), the Bank issued a letter dated 04.06.2009 stating that in view of the pendency of the court proceedings the date for the balance payment will be intimated in time. Thus, it can be safely inferred that the Bank agreed to extend the time for deposit of the balance sale consideration. It is pertinent to note that borrower's appeals were dismissed by the Tribunal on 01.10.2009 and immediately thereafter the auction-purchasers paid the balance amount on 05.10.2009 itself. The aforesaid contention, therefore, does not deserve acceptance.

23. Admittedly, after appropriation of sale proceeds, the Bank was left with an excess amount of Rs.1,33,94,054/- (Rupees One Crore Thirty-Three Lakhs Ninety-Four Thousand Fifty-Four only). The Bank had offered the aforesaid amount to the borrower by way of a demand draft which it declined to accept presumably on account of pending litigation. The Bank ought to have kept the aforesaid balance amount in an interest-bearing account. However, the Bank has failed to do so. For this omission on the part of the Bank, the borrower cannot be penalized. The borrower is entitled to refund of the balance sale consideration along with interest.

CONCLUSION

24. For the aforementioned reasons, the impugned judgment dated 22.03.2013 passed in Writ Petition Nos. 24241-24244 of 2012, Writ Petition No. 32610 of 2012 and Writ Petition No. 32611 of 2012 as well as the order dated 20.06.2011 passed by the DRAT are quashed and set aside. The Bank is directed to refund the amount of Rs.1,33,94,054/- (Rupees One Crore Thirty-Three

Lakhs Ninety-Four Thousand Fifty-Four only) along with interest at the rate of 7% *per annum* from 23.03.2010 i.e. the date when the surplus amount was kept in a non-interest bearing account till the payment is made to the borrower.

25. In the result, the Civil Appeal Nos. 9228-9231 of 2013 and Civil Appeal @ Special Leave Petition @ Diary No. 31322 of 2018 are allowed whereas Civil Appeals @ Special Leave Petition (Civil) Nos. 1441-1446 of 2014 are disposed of.

26. There shall be no order as to costs.

..J.
[PAMIDIGHANTAM SRI NARASIMHA]

..J.
[ALOK ARADHE]

NEW DELHI;
AUGUST 21, 2026.