



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1127 OF 2018

Hotel Avion Private Ltd  
Through its Director  
Mr. Trevor Misquitta  
Having its office at Nehru Road,  
Opp. Domestic Airport,  
Vile Parle (E), Mumbai 400 057

...Appellant

Versus

1. State of Maharashtra  
Through its Inspector of Police,  
Economic Offences Wing  
Unit VII,  
Having Office Opposite CST  
Fort, Mumbai.

2. The Competent Authority  
under the M.P.I.D. Act, 1999  
and Sub-Divisional Officer,  
Mumbai Suburban District,  
having office at 9<sup>th</sup> Floor,  
Administrative Building,  
Bandra (East)  
Mumbai - 400 051

3. M/s. Arya Lusters  
Through its Agent  
Mr. Ved Prakash Arya  
Having office at 1<sup>st</sup>  
Floor, 212/1 Panjrapol  
Compound, G.P. Bldg.

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C.P. Tank, Mumbai 400 004

4. Ms. Ulka Mahadev Sonawane  
51 Yrs, Occu: Service R/at B.I.T.  
Chawl No. 3, 1<sup>st</sup> Floor,  
Room No. 7, Dr. Maheshwari  
Road, Mumbai – 09.

...Respondents

**WITH  
CRIMINAL APPEAL NO. 1323 OF 2018**

Hotel Avion Private Ltd  
Through its Director  
Mr. Trevor Misquitta  
Having its office at Nehru Road,  
Opp. Domestic Airport,  
Vile Parle (E), Mumbai 400 057

...Appellant

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Having office at 1<sup>st</sup>  
Floor, 212/1 Panjrapol  
Compound, G.P. Bldg.  
C.P. Tank, Mumbai 400 004

...Respondents

Mr. Mihir Desai, Senior Advocate a/w Mr. Vijay Hiremath, Ms. Arati Ranade and Ms. Sanskriti Yadav for Appellant in both Appeals

Mr. Subhash Jha a/w Mr. Ghanshyam Upadhyay, Mr. Siddharth Jha, Ms. Monika Kale, Ms. Alka Pandey i/b D. Joshi for Respondent No. 3

Mrs. P. P. Shinde, APP for the State

Ms. Meghna Gowalani for Respondent No. 4

Mr. Bhagvat Gavande, Sub Divisional Officer and Competent Authority, Mumbai Western.

Mr. Amrut Pawar, Police Inspector, EOW, 8 Mumbai.

**CORAM: REVATI MOHITE DERE &  
GAURI GODSE, JJ.**

**CLOSED FOR ORDERS : 8<sup>th</sup> JUNE 2023**

**PRONOUNCED ON : 14<sup>th</sup> JULY 2023**

**JUDGMENT (PER; GAURI GODSE, J.) :-**

**Brief Facts:**

1. Both the Criminal Appeals are filed under Section 11 of the Maharashtra Protection of Interest of Depositors (In Financial

Establishments) Act, 1999 (“MPID Act”) for challenging the orders passed by the Learned Special Judge of the MPID Court by which the learned Judge accepted the respondent no.3, as a successful bidder on 14<sup>th</sup> August 2018 in the auction proceedings for sale of Hotel Jal property.

2. Criminal Appeal No. 1127 of 2018 is filed under Section 11 of the MPID Act for challenging the Order dated 28<sup>th</sup> August 2018, by which Miscellaneous Application No. 1100 of 2018 preferred by the appellant was rejected; Order dated 30<sup>th</sup> August 2018, by which Miscellaneous Application No. 1099 of 2018 was partly allowed; and Order dated 14<sup>th</sup> August 2018, by which the respondent no. 3’s Miscellaneous Application No. 186 of 2018 was allowed by the Special Judge MPID Act, Mumbai (“the Special Judge”). By way of amendment, the appellant also challenged the Orders dated 19<sup>th</sup> October 2018 below Exhibit 6 and 13<sup>th</sup> November 2018 below Exhibit 9 in Miscellaneous Application No. 186 of 2018, passed by the Special Judge. The appellant also prayed for directing the Competent Authority to forfeit the amount paid by respondent no. 3 as per the auction notice dated

10<sup>th</sup> January 2018.

3. The appellant has also preferred Criminal Appeal No. 1323 of 2018 for challenging the Order dated 19<sup>th</sup> October 2018, passed below Exhibit 8 in Miscellaneous Application No. 186 of 2018, by the Special Judge. Both the Appeals are heard together and disposed of by this common Judgment and Order.

4. By the impugned Order dated 14<sup>th</sup> August 2018, respondent no.3's bid was accepted as being the highest bid and respondent no. 3 was directed to deposit the entire amount of the sale price within 60 days.

5. By the impugned Order dated 28<sup>th</sup> August 2018, the learned Special Judge rejected the Miscellaneous Application No. 1100 of 2018 filed by the appellant by holding that the appellant had not disputed the financial status and locus of the bidders till the date of auction proceedings were completed and now only the sale transaction was to be executed. Miscellaneous Application No. 1100 of 2018 was filed by the appellant, praying for directing respondent no. 2-the Competent

Authority to file a compliance report whether, while accepting the bid for Hotel Jal property, the guidelines given by the Hon'ble Supreme Court in Order dated 11<sup>th</sup> May 2010 ("said guidelines") were followed. The appellant had also prayed that in the event of non-compliance with the said guidelines, the auction proceedings with respect to the Hotel Jal property be set aside.

6. By the impugned Order dated 30<sup>th</sup> August 2018, the learned Special Judge partly allowed the application filed by respondent no. 3 and directed to correct the roznama dated 14<sup>th</sup> August 2018 for correcting the bid amount as Rs. 46.75 crores instead of Rs. 46.70 crores.

7. By the impugned Order dated 19<sup>th</sup> October 2018 passed below Exhibit 6, respondent no.3 was granted an extension of time up to 26<sup>th</sup> October 2018 till 2:45 pm to deposit the remaining amount of the sale price. It was recorded in the said Order that respondent no. 3 had already deposited an amount of Rs. 25.50 crores and had prayed for an extension of time to deposit the remaining amount of Rs. 21.25 crores.

By Order dated 13<sup>th</sup> November 2018 passed below Exhibit 9, respondent no. 3 was granted an extension of time for three weeks to deposit the balance consideration amount of Rs. 19.25 crores. The said Order dated 19<sup>th</sup> October 2018, passed below Exhibit 8, is also challenged by the Appellant by filing separate Criminal Appeal No. 1323 of 2018.

**8.** In the year 2000, MPID Special Case No. 36 of 2000 was filed against the promoter/director of C.U. Marketing Company. By a notification dated 17<sup>th</sup> May 2000, a total of 18 properties belonging to the said company were proposed to be attached. Out of said 18 properties, the property at serial no. 18 - Hotel Jal, is the subject matter of the present appeals. During the pendency of the proceedings, Criminal Appeal No. 1597 of 2005 was filed before the Hon'ble Supreme Court. In the said Appeal, by an Order dated 11<sup>th</sup> May 2010, Hon'ble Supreme Court allowed Miscellaneous Application No. 752 of 2010 for disposing of certain properties owned by the said company and the Competent Authority was directed to auction the said 18 properties in accordance with the procedure stipulated in Annexure A-

3, which was part of the said order. In the year 2015, Mr Ved Prakash Arya submitted a proposal on behalf of Saffron Developers, offering to buy all 18 properties, including Hotel Jal.

**9.** On 10<sup>th</sup> January 2018, the Competent Authority published a notice for the purpose of the auction of seven properties described in the said notice. The property of Hotel Jal was described as item no. 18 in the said notice. The said notice for auction sale prescribed certain terms and conditions. On 7<sup>th</sup> February 2018, respondent no. 3-Arya Lusters, through Mr Ved Prakash Arya, filed Miscellaneous Application No. 186 of 2018 in the MPID, Special Case No. 36 of 2000, offering to purchase the property - Hotel Jal.

**10.** On 1<sup>st</sup> June 2018, the appellant filed Miscellaneous Application No. 732 of 2018 in the said MPID Special Case No. 36 of 2000, seeking permission to participate in the auction sale with respect to Hotel Jal as per the auction notice dated 10<sup>th</sup> January 2018. By the impugned Order dated 14<sup>th</sup> August 2018, the MPID court declared the bid amount of Mr Ved Prakash Arya, as quoted in Miscellaneous

Application No. 186 of 2018, as the highest bid amount. The Court further recorded that Mr Ved Prakash Arya shall deposit the entire amount of the sale price within 60 days, failing which the earnest amount deposited would be forfeited.

**11.** The appellant filed Miscellaneous Application No. 1099 of 2018, praying for correcting the Rozanama dated 14<sup>th</sup> August 2018, for correcting the amount of the final auction price as Rs.46.75 Crores instead of Rs. 46.70 Crores and for showing the successful bidder's name as Arya Lusters Associates instead of Ved Prakash Arya. On 24<sup>th</sup> August 2018, the appellant filed Miscellaneous Application No. 1100 of 2018, praying for directing respondent no. 2 to file a compliance report as to whether the said guidelines prescribed by the Hon'ble Supreme Court by an order dated 11<sup>th</sup> May 2010 were complied. The appellant further prayed that in the event of non-compliance with the said guidelines issued by the Hon'ble Supreme Court, the proceedings initiated by respondent no. 2 with respect to the auction of the Hotel Jal property be declared as disqualified.

**12.** By the impugned Order dated 28<sup>th</sup> August 2018, the Special Judge rejected the Miscellaneous Application No. 1100 of 2018 filed by the appellant by holding that the appellant had not disputed the financial status and locus of the bidders till the date auction proceedings were completed and that only when the sale transaction remained to be executed the said application was filed.

**13.** By the impugned Order dated 30<sup>th</sup> August 2018, the learned Special Judge partly allowed the Miscellaneous Application No. 1099 of 2018 filed by the appellant. Thus, the learned Special Judge issued directions to correct the final bid amount as Rs. 46.75 Crores; however, refused to correct the name of the successful bidder.

**14.** The bid of respondent no. 3 was accepted on 14<sup>th</sup> August 2018. On 19<sup>th</sup> October 2018, respondent no. 3 was granted an extension up to 26<sup>th</sup> October 2018 for depositing the balance amount of the sale price. By an Order dated 13<sup>th</sup> November 2018, respondent no. 3 was granted an extension of 3 weeks for making the payment of the balance amount of Rs. 19.25 crores. Hence, by way of amendment, the

appellant has also challenged the said Orders dated 19<sup>th</sup> October 2018 and 13<sup>th</sup> November 2018 in the aforesaid Criminal Appeal No. 1127 of 2018.

15. Thus, as per the extensions granted to respondent no. 3, the last date to deposit the balance amount of the sale price was 3<sup>rd</sup> December 2018. However, the entire balance amount of the sale price was deposited by respondent no. 3 by 18<sup>th</sup> January 2019.

**Submissions on behalf of the Appellant:**

16. Mr Mihir Desai, learned senior counsel for the appellant, submitted that the Competent Authority was under obligation to comply with the guidelines as per Annexure 3 of the Order dated 11<sup>th</sup> May 2010 passed by the Hon'ble Supreme Court. He submitted that as per the guidelines, the Competent Authority was under obligation to verify the financial capacity of the bidder before finally accepting the offer. He further submitted that MPID Court could not have granted extension of time for depositing the amount of the sale price as prayed by respondent no. 3.

**17.** He submitted that as per the auction notice, respondent no. 3 had failed to deposit 10% of the total consideration amount as earnest money within the stipulated time. Even as per the Orders of extension granted by the learned Special Judge, respondent no. 3 failed to deposit the entire amount of the sale price within the extended time. Learned senior counsel submitted that 10% of the earnest amount was deposited by respondent no. 3 by way of fixed deposits and the actual payment was never made. Thus, mandatory conditions of the auction notice were not complied with. As per the terms and conditions of the auction notice, a specific time was stipulated for depositing the earnest money, as well as the sale price after acceptance of the final bid; however, the dates of various deposits made by respondent no. 3 would show that the amounts were not deposited within time. It was submitted that the action of the Competent Authority permitting respondent no. 3 to deposit the amounts contrary to the terms and conditions of the auction notice amounts to depriving the other participants from participating in the auction proceedings.

**18.** According to Mr. Desai, the financial capacity and genuineness of

respondent no. 3 were never tested as directed by the Hon'ble Supreme Court; that the amounts towards sale price were required to be deposited in the savings account in the State Bank of India, however, the said condition was also not complied with. Learned senior counsel thus submitted that non-compliance with the terms and conditions of the auction notice has vitiated the entire auction proceedings and has rendered the auction sale a nullity.

**19.** By an order dated 27<sup>th</sup> August 2018, the learned Special Judge passed an order in Miscellaneous Application No. 184 of 2018 filed by respondent no. 3, thereby allowing the amount in the application to be transferred to the account of respondent no. 3 for purchasing Roha Paper Mill property. He, thus, submitted that the aforesaid facts would show that the guidelines of the Hon'ble Supreme Court were not followed and the terms and conditions of the auction notice were also not complied, which has rendered the auction process a nullity.

**20.** In support of his submissions, learned senior counsel for the Appellant relied upon the following decisions:-

- 1) *Tirupati Rice Mills Pvt Ltd Vs. Central Bank of India and another*<sup>1</sup>
- 2) *Manilal Mohanlal Shah and Ors Vs. Sardar Sayed Ahmed Sayed Mahamad and Ors*<sup>2</sup>.
- 3) *Central Coalfields Limited and Ors Vs. SLL-SML (Joint Venture Consortium) and Ors*<sup>3</sup>.

21. Thus, learned senior counsel on behalf of the appellant submitted that non-compliance with the terms and conditions of the auction notice as well as the said guidelines issued by the Hon'ble Supreme Court as stated hereinabove, has vitiated the entire auction proceedings. He thus submitted that the Orders impugned in the appeal, thereby accepting the bid amount of respondent no. 3 and granting extensions for making payment of the sale price are required to be quashed and set aside.

**Submissions on behalf of Respondent No. 3:**

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<sup>1</sup> 2016 SCC Online Bom 11085

<sup>2</sup> AIR 1954 SC 349

<sup>3</sup> (2016) 4 SCR 890

**22.** Learned counsel appearing for respondent no. 3 supported the Orders impugned in the aforesaid appeals. He submitted that the object of the MPID Act is to protect the interest of the investors. He relied upon the sections 7, 10 and 13 of the MPID Act, as well as Rules 5, 8 and 9 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Rules 1999. He submitted that the object of the said MPID Act and the said Rules is to protect the interest of the depositors, and thus the Competent Authority, as well as the learned Special Judge, has in exercise of the powers conferred under the said MPID Act and the said Rules, has rightly accepted the respondent no. 3 as the successful bidder and permitted to deposit the entire sale price.

**23.** Learned counsel submitted that respondent no. 3 was willing to purchase all 18 properties as per the auction notice and had thus had offered an amount of Rs. 150 crores and thereafter increased the said offer to Rs. 198 crores, which was ultimately increased to Rs. 210 crores. He submitted that respondent no. 3 had initially already deposited the amount of Rs.3.75 crores towards the offer for

purchasing the other properties. Hence, the financial capacity of respondent no. 3 was sound, and hence no separate verification of the financial capacity of respondent no. 3 was required. He relied upon the letter dated 3<sup>rd</sup> March 2018, by which all the details with respect to the deposit of the entire amount of Rs.4.5 Crores towards 10% of the total amount as the earnest deposit was made on behalf of respondent no. 3. He submitted that on 14<sup>th</sup> August 2018, the offer of respondent no. 3 was accepted and as per the extensions granted, respondent no. 3 has deposited the entire amount towards the sale price. However, the last amount was deposited on 18<sup>th</sup> January 2019. He submitted that though there was no formal Order extending the last deposit, the entire amount deposited on behalf of respondent no. 3 is accepted by the Competent Authority.

**24.** Learned counsel relied upon Rule 9 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules. He submitted that as per sub-Rule 4 of Rule 9, there was an embargo of extension of time to deposit the amount as per the auction sale proceedings. However, as per the settled law, inspite of the said

embargo, it is held that extension to make a deposit of the sale consideration amount can be granted. He thus submitted that in the present auction proceedings under MPID Act, respondent no. 3 stands on a better footing as there is no such embargo in granting an extension of time. In support of his submissions, he relied upon the decision of the Hon'ble Supreme Court in the case of *Tata Motors Limited Vs. Brihan Mumbai Electric Supply Undertaking (BEST) and others*<sup>4</sup>.

**Submissions on Behalf of Respondent No. 2:**

25. Learned APP appearing for respondent no. 2-Competent Authority relied upon the Affidavits dated 16<sup>th</sup> October 2018 and 30<sup>th</sup> October 2018 filed on behalf of respondent no. 2 to show that the financial capacity of respondent no. 3 was verified. She submitted that respondent no.3 had already deposited various amounts since the year 2015 towards the purchase of other properties. She further submitted that the fixed deposits submitted by the respondent no. 3 were encashed, and amounts were transferred to the concerned account in the State Bank of India. She further submitted that the entire auction

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<sup>4</sup> 2023 SCC OnLine SC 671

price is deposited; however, in view of the interim relief granted by this Court on 6<sup>th</sup> October 2018 in the present Appeal, the sale was not confirmed.

**Submissions in Rejoinder on Behalf of Appellant:**

26. Mr. Desai, the learned senior counsel, in response to the submissions made on behalf of respondent nos. 2 and 3, submitted that though this Court, by Order dated 22<sup>nd</sup> November 2018, had directed that no further extension should be granted by the Trial Court, the respondent no. 3 was permitted to deposit the balance amount. He further submitted that the appellant had submitted all the financial documents to show the financial capacity of the appellant. He tendered a copy of the letter dated 26<sup>th</sup> February 2019 submitted by respondent no. 3 requesting the Competent Authority to return the amount deposited by them pursuant to MA No. 185. He, thus, submitted that the conduct of the respondent no. 3 showed that respondent no. 3 had no financial capacity to complete the sale transaction; however, the Competent Authority had never taken steps to test the financial capacity

of respondent no. 3. Thus, in view of non-compliance with the guidelines of the Hon'ble Supreme Court as well as the terms and conditions of the auction notice, the entire auction process stood vitiated. Hence, the impugned Orders accepting respondent no. 3 as the successful bidder and subsequent orders granting extension of time to deposit the sale price are illegal and, thus, be quashed and set aside by allowing the present Appeals.

**Interim Order Pending the Appeals:**

27. By Order dated 6<sup>th</sup> October 2018, this Court had directed that if the money is deposited by respondent no. 3 within the stipulated period as per the Order dated 14<sup>th</sup> August 2018, the Competent Authority not to confirm the sale. Both the Appeals are admitted by Order dated 15<sup>th</sup> February 2023, and by the same Order, interim relief granted by Order dated 6<sup>th</sup> October 2018 was vacated by issuing certain directions to the Trial Court for executing the sale deed in favour of respondent no. 3. The operative part of the Order dated 15<sup>th</sup> February 2023 reads thus:

*“7) In view thereof, ad-interim relief granted by Order*

*dated 6<sup>th</sup> October, 2018 is vacated.*

*7.1) The trial Court is directed to pass appropriate orders directing the Competent Authority to disburse/distribute amounts lying with it in favour of the investors as early as possible.*

*7.2) The Competent Authority is directed to execute sale-deed of the suit property in favour of Respondent No. 3.*

*7.3) It is made clear that, the sale of suit property in favour of Respondent No.3 shall be subject to the final outcome of the present Appeals. In case the Appeals are decided against the Respondent No.3, it shall not claim any equity in the matter.*

*7.4) During the pendency of the present Appeals, Respondent No.3 is directed, not to create any third party right, title or interest in the suit property including mortgage or lien on the suit property.”*

**28.** Feeling aggrieved by the said Order dated 15<sup>th</sup> February 2023, the appellant approached the Hon’ble Supreme Court by filing Special Leave Petition (Criminal) Diary Nos. 6924/2023. The Hon’ble Supreme Court, by Order dated 17<sup>th</sup> March 2023, disposed of the said SLP by passing the following Order:

*“We have heard learned counsel for the parties, great length.*

*Permission to file special leave petition is granted.*

*Considering the facts and circumstances, we are of the opinion that two condition(s), 1.0. 7,2 and 7.3 imposed in the impugned order dated 15.02.2023 passed by the High court in Crl. A. No. 1127 of 2018 with Crl. Appln. (APPA) No. 825/2019 and Crl. Appln. (APPA) No. 2053 of 2018 with Crl. A. No.1323 of 2018 are required to be modified:*

*Condition No.7.2 reads as under :*

*"Competent Authority is directed to execute sale-deed of the suit property in favour of Respondent No.3."*

*The above condition is set aside and modified as under:*

*Till the final adjudication of the disputed matter before the High Court in appeal, no sale-deed shall be executed in favour of either of the parties.*

*Condition No.7.3 reads as under :*

*"It is made clear that, the sale of suit property in favour of Respondent No.3 shall be subject to the final outcome of the present Appeals. In case the Appeals are decided against the Respondent No.3, it shall not claim any*

*equity in the matter.”*

*The above condition is set aside and modified as under:*

*The question of execution of sale deed in favour of any of the parties would arise only after the final adjudication of the disputed matter.*

*We are making it clear that we have not interfered with the direction passed by the High court regarding disbursement of the amount lying with it in favour of the investors which shall be subject to the final outcome of the dispute between the parties.*

*Rest of the conditions imposed by the High Court in the impugned order shall continue to operate.*

*Considering the facts and circumstances, we also request the High Court to decide the appeals pending before it in this connection expeditiously but not later than two months from today.*

*The special leave petitions stand disposed of.*

*Pending application(s), if any, shall also stand disposed of.”*

**29.** Thus, in view of the directions issued by the Hon’ble Supreme Court, both Appeals were heard by us and are disposed of by this common Judgment and Order.

**Consideration of Submissions and Conclusions:**

30. We have considered the submissions made on behalf of all parties. We have perused the record of the Appeals.

31. By notice dated 10<sup>th</sup> January 2018, the Competent Authority issued public notice for the auction sale of the seized properties as described in the notice. The present appeals are concerning the property at serial no. 18- Hotel Jal. The said notice prescribed certain terms and conditions for the auction sale. Relevant terms and conditions for deciding the controversy are reproduced hereunder:

*“3) The final purchaser/bidder shall pay the balance amount within 60 days after the date of auction by demand draft/pay order drawn in favour of Competent Authority & Sub Divisional Officer, Mumbai Western Suburban. After deposition of the said full amount by purchaser/bidder then only purchase Certificate of properties will be issued according to the order of Special Hon’ble Court. Thereafter as per the order of Special Hon’ble Court, D.D/Pay order of remaining balance amount would be deposited in bank.*

*9) If the purchaser could not pay the full cost of bidding amount within 60 days period, his partly paid amount will be forfeited including earnest money & the property will be again put for the fresh bidding offers.*

*12) For taking participation in auction sale, applicant has to pay 10% amount as per the government valuation as a earnest money. This advertisement is available on website <http://mumbaisuburban.gov.in> and also on notice board of this office as well as of the Hon'ble Collector, Mumbai Suburban District, Hon'ble Collector, Palghar, and Court Room No. 36. Hon'ble City Civil Court, Mumbai.*

*13) The all rights have been reserved by this office to change or make addition in any given terms & conditions.”*

**32.** It is submitted on behalf of the appellant that the entire sale price is not deposited by respondent no. 3 within the prescribed period of sixty days as per the terms and conditions of the auction notice. Hence, as per condition no. 9 of the auction notice, the earnest money deposit of respondent no. 3 is required to be forfeited, and the property is

required to be again put up for fresh bidding offers.

**33.** Another grievance of the appellant is regarding non-compliance with the said guidelines issued by the Hon'ble Supreme Court vide Order dated 11<sup>th</sup> May 2010 for following the procedure described in Annexure A-3. Copy of the Order dated 11<sup>th</sup> May 2010, along with Annexures A-2 and A-3, is on page 30 of the Criminal Appeal No. 1127 of 2018.

**34.** It is the grievance of the appellant that the said guidelines were not followed before accepting the bid offer of respondent no. 3 for the sale of the Hotel Jal property. In short, the grievance of the appellant is that the Competent Authority has not followed the following conditions as per the said guidelines:

- (i) The financial capacity of respondent no. 3, as per clause 4, is not ascertained.
- (ii) As per clause 5, the true market value of the property is not ascertained by seeking necessary information for selling the property to a genuine buyer offering the highest price.

- (iii) Earnest amount of the decided price from the prospective buyer is not deposited in the designated bank account.

35. Thus, the appellant had filed MA No. 1100 of 2018 for directing the Competent Authority to file compliance report as to whether, while accepting the bid of respondent no. 3, the said guidelines were followed. A perusal of the Auction Notice would show that the auction process was conducted as per the said guidelines. Affidavits filed on behalf of respondent no. 2 indicate that the financial capacity of respondent no. 3 is verified, and the earnest amount, as well as the entire auction price, is also deposited. It further reveals that respondent no.3 had already deposited various amounts since the year 2015 towards other properties and that the fixed deposits submitted by respondent no. 3 were encashed, and the amounts were transferred to the concerned account in the State Bank of India. Respondent No. 2 has further stated in the Affidavits that the appellant had never raised any objection against respondent no. 3 during the auction proceedings and that the contentions raised now are vague and baseless. An affidavit

dated 6<sup>th</sup> February 2019 filed on behalf of respondent no. 2 states that the bid amount of respondent no. 3 was the highest, and hence the same was accepted. The said affidavit further provides the details of the entire sale price of Rs. 46.75 crores deposited by respondent no. 3, with the last deposit made on 18<sup>th</sup> January 2019. The said affidavit also indicates that the entire amount is invested in a term deposit scheme which is renewed from time to time.

**36.** Though the appellant has filed an affidavit-in-rejoinder raising objection to the contentions of respondent no. 2, there is nothing shown to us that will controvert the case of respondent no. 2. Perusal of the record and Affidavits filed on behalf of respondent no. 2-Competent Authority shows that in compliance with the Order dated 6<sup>th</sup> February 2019 passed by this Court, the Competent Authority had encashed the fixed deposits as shown in paragraph no. 3 of the affidavit of Mr. Suresh Thale, Nayab Tahsildar and have invested the same in short-term deposits in the nationalised bank, which is renewed from time to time.

**37.** The record and proceedings show that the auction process is

conducted as per the terms and conditions of the notice dated 10<sup>th</sup> January 2018. On perusal of the record, we do not find any substance in the objection raised by the Appellant that the true market value of the property is not ascertained for selling the property to a genuine buyer offering the highest price. Though it is sought to be contended on behalf of the appellant that the condition of deposit of 10% earnest amount is not complied with by respondent no. 3, the affidavits filed on behalf of the Competent Authority do not state that the terms and conditions of auction notices are not complied with. We do not see any reason to disbelieve the statements made by the Competent Authority.

**38.** Though an objection is raised on behalf of the appellant that the entire sale price is not deposited by respondent no. 3 within 60 days after the date of auction, the affidavits filed by the Competent Authority show that the entire sale price is deposited by respondent no. 3, and the last deposit is made on 18<sup>th</sup> January 2019.

**39.** The record shows that the last extension of time granted to respondent no. 3 for depositing the balance amount of the sale price

was by Order dated 13<sup>th</sup> November 2018 for a period of three weeks which expired on 3<sup>rd</sup> December 2018, and respondent no. 3 completed payment of the full amount towards the sale price by 18<sup>th</sup> January 2019. As per the terms and conditions of the notice dated 10<sup>th</sup> January 2018, the successful bidder was required to pay the balance sale price within 60 days of the date of the auction. It is important to note here that as per clause 13 of the said notice, all the rights have been reserved by the Competent Authority to change or make additions to any given terms and conditions. Even otherwise, the Special Court has also granted extension of time to respondent no. 3 from time to time for making the payment.

**40.** It is brought to our notice that by Order dated 22<sup>nd</sup> November 2018, this Court had extended the ad-interim relief already granted in the present appeal up to 6<sup>th</sup> December 2018 and further directed that no further extension shall be granted by the Trial Court until further Orders of this Court. The learned Special Judge had granted an extension for making payment of the balance amount towards the sale price, lastly by Order dated 13<sup>th</sup> November 2018. Thus, it appears that

in view of the Order passed by this Court on 22<sup>nd</sup> November 2018, no further extension was granted to respondent no. 3. Be that as it may be, respondent no. 3 has deposited the entire amount towards the sale price by 18<sup>th</sup> January 2019.

**41.** It is also brought on record that the entire amount towards the sale price is invested by the Competent Authority in a short-term deposit scheme, and the same is renewed from time to time and that a sufficient amount towards interest is generated on the said deposits. We are informed that approximately an amount of Rs. 6.67 Crores is generated towards interest on the sale price of Rs. 46.75 Crores deposited by respondent no. 3. The aforesaid facts would show that as per the extension of time granted by the learned Special Judge, respondent no. 3 has deposited the amounts towards the sale price, and the Competent Authority has accepted the entire amount and also deposited the same in a short-term deposit scheme as directed by this Court. It is necessary to note that a substantial amount is already generated towards interest on the said deposits.

**42.** Mr. Jha, learned counsel appearing for respondent no. 3 on instructions submitted that though the amounts were directed to be deposited without prejudice to the rights and contentions of the parties, respondent no. 3 shall not claim the amount towards the interest that is generated on the sale price deposited by respondent no. 3.

**43.** As per the auction notice dated 10<sup>th</sup> January 2018, respondent no. 3 filed an application on 7<sup>th</sup> February 2018, offering to purchase the concerned property. So far as the appellant is concerned, the application was filed by the appellant on 1<sup>st</sup> June 2018, i.e. after more than 4 months of the time prescribed by the auction notice. Respondent No. 3, being the highest bidder, the offer of respondent no. 3 was accepted by the MPID Court on 14<sup>th</sup> August 2018. By the present appeal, the appellant has challenged the Order dated 14<sup>th</sup> August 2018. However, the appellant admittedly has not offered any better amount over and above the bid offered by respondent no. 3.

**44.** By the present appeal, the appellant has challenged the order dated 30<sup>th</sup> August 2018 by which the application being M.A. No. 1099

of 2018 filed by the appellant for making corrections in the Order dated 14<sup>th</sup> August 2018 for correcting the name of the successful bidder as Arya Lusters Associates and not Ved Prakash Arya is rejected and only the prayer for correcting the final auction price as Rs. 46.75 Crores instead of Rs. 46.70 Crores is allowed. It is not in dispute that Arya Luster Associates is represented by Mr. Ved Prakash Arya and the entire amount towards the sale price is deposited by Arya Luster Associates through Ved Prakash Arya. Hence, we do not find any substance in the submissions made by the appellant for correcting the name of successful bidder.

**45.** So far as the impugned Order dated 28<sup>th</sup> August 2018, thereby rejecting the appellant's M.A. No. 1100 of 2018 is concerned, respondent no. 2-Competent Authority has already filed affidavits, thereby stating that the said guidelines issued by the Hon'ble Supreme Court are followed before accepting the bid of respondent no. 3. The said application being MA No. 1100 of 2018, was filed by the appellant for directing the Competent Authority to file compliance report whether the said guidelines were followed before accepting the bid of

respondent No. 3. The MPID Court by Order dated 28<sup>th</sup> August 2018 have rejected the application by holding; that the appellant and their advocate did not participate in the auction proceedings, that the appellant neither disputed the locus standi of respondent no. 3 nor raised any dispute about the financial status of respondent no. 3, that Mr. Ved Prakash Arya is already declared as the highest bidder, and time was granted to deposit the remaining sale price and that the bidding process was completed. Thus, the learned Special Judge rejected the application filed by the appellant.

**46.** Irrespective of the reasons given by the learned Special Judge of the MPID Court for rejecting the application filed by the appellant, we, on perusal of the record, find that the said guidelines issued by the Hon'ble Supreme Court are followed by the Competent Authority. So far as the financial status of respondent no. 3 is concerned the Competent Authority has already placed on record that even before the auction process, respondent no. 3 has deposited various amounts since the year 2015 towards the purchase of the other properties. The affidavits filed by the Competent Authority show that the financial

documents of respondent no. 3 were also verified. We have perused the said guidelines, and in our view, the record shows that the said guidelines are complied with by the Competent Authority. The appellant has mainly raised objections on verification of the financial status of respondent no. 3 and non-deposit of the sale price in the designated account. The Competent Authority has placed on record that respondent no. 3 had submitted all the documents for verification of its financial status and that the same are verified. It is also brought on record that respondent no. 3 has deposited various amounts since the year 2015 towards the purchase of other properties. As stated herein above, the Competent Authority has placed on record that the entire amount towards the sale price is deposited and is lying in the designated account, and the same is invested in a short-term deposit, which has generated a substantially large amount towards interest. Thus, we do not find any merit in the submissions made by the appellant regarding the financial status of respondent no. 3.

47. So far as the payment towards the entire sale price within 60 days of the auction is concerned, respondent no. 3 was granted extension

from time to time to deposit the balance amount towards the sale price. Accordingly, the entire sale price is deposited by 18<sup>th</sup> January 2019. We have already held that though the last date to deposit the balance amount was 3<sup>rd</sup> December 2018, it appears that the last extension remained pending in view of the Order passed by this Court on 22<sup>nd</sup> November 2018, thereby directing the MPID Court not to grant the further extension. Hence, it appears that after the Order of extension granted on 13<sup>th</sup> November 2018, a further extension was not granted.

**48.** We have held that as per clause 13 of the terms and conditions of the auction notice, the Competent Authority had reserved all the rights to change or make addition to the terms and conditions. There is nothing argued before us that would show that there is any bar under the provisions of the said MPID Act or the said Rules of 1999, to grant an extension of time to deposit the amount towards the sale price. Thus, in our view, condition no. 9 for depositing the balance amount towards the sale price within 60 days would stand modified in view of acceptance of the entire amount by the Competent Authority by exercising the right reserved as per clause 13. Even otherwise, the

appellant has never offered any better price and admittedly, respondent no. 3 is the highest bidder.

**49.** During the pendency of the Appeals, this Court, by way of interim relief granted on 15<sup>th</sup> February 2023, had directed the Trial Court to pass appropriate Orders directing the Competent Authority to disburse/distribute amounts lying with it in favour of the investors as early as possible. It is necessary to note that the Hon'ble Supreme Court, by the aforesaid Order dated 17<sup>th</sup> March 2023, has confirmed the said direction. However, we are informed that, unfortunately, till date, no Orders are passed to disburse the amounts in favour of the investors.

**50.** We find it necessary to take into consideration the objects of the said MPID Act. This Act is brought into force to protect the interest of depositors in the financial establishment and matters relating thereto. As pointed out by Mr. Jha, learned counsel for respondent no. 3, the relevant provisions of the said MPID Act, as well as the Rules framed thereunder, show that the object of the said Act is to protect the interest

of the depositors for which the powers are vested in the Competent Authority as per Section 10 and 13 of the said MPID Act.

**51.** In view of the provision of Section 10 of the said MPID Act read with Rule 5 of the Rules of 1999, any property attached and vested in the Competent Authority is to be administered as far as may be practicable in the best interest of the depositors and the financial establishment as deemed fit by the Competent Authority. In our view, the Competent Authority and the MPID Court have rightly accepted respondent no. 3 as the successful bidder on the basis of the highest price offered by respondent no.3, and respondent no. 3 has also deposited the entire amount towards the sale price. Hence, considering the purpose behind legislating the MPID Act, we find that the Competent Authority has, in its wisdom, acted in the best interest of the depositors.

**52.** We find that the learned Special Judge of the MPID Court has properly appreciated the facts and circumstances of the case and, keeping in mind the objects of the MPID Act, has passed appropriate

Orders which are in the interest of the depositors. It is also important to take into consideration that the amount towards the sale price has also generated a substantial amount towards interest, which can be utilised in the best interest of the depositors. Thus, for the reasons stated above, we do not find any substance in the objections raised by the appellant. In our view, the Orders impugned in the present appeal do not warrant any interference.

**53.** So far as the decisions of the Hon'ble Supreme Court, as well as this Court, relied upon by the learned senior counsel for the appellant, are concerned, we do not find that the principles laid down in the said decisions are of any assistance in the facts of the present case. The decision of this Court in the case of *Tirupati Rice Mills* is concerned the same was arising out of the DRT proceedings, and the said decision is not of any assistance in the facts of the present case. So far as the decision of the Hon'ble Supreme Court in the case of *Central Coalfields Limited and others* is concerned, the same is with respect to tender proceedings, and hence, the principles laid down in the said decision are not applicable to the presents case which deals with auction proceedings

with respect to the property attached under the said MPID Act.

54. The decision of the Hon'ble Supreme Court in the case of *Tata Motors* relied upon by Mr. Jha is concerned; the same also deals with tender proceedings for awarding contracts, and hence, the same is also not applicable in the facts of the present case.

55. Thus, in view of the reasons recorded above, we do not find any merit in both the appeals. Hence, both the appeals are dismissed.

**GAURI GODSE, J.**

**REVATI MOHITE DERE, J.**

56. After the judgment was pronounced, learned Senior Counsel for the appellant sought continuation of the interim relief in operation till today.

57. Accordingly, the said order which is in force till today to continue for a period of three weeks.

**GAURI GODSE, J.**

**REVATI MOHITE DERE, J.**