



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 14633 OF 2024 (O&M)
RESERVED ON : SEPTEMBER 06, 2024
DATE OF DECISION : OCTOBER 04, 2024

M/s Micro Turner through Sachin Kapoor ...Petitioner

Versus

Union Bank of India through Chief Manager ...Respondent

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Sidharth Batra, Advocate and
Mr. Abhinav Sood, Advocate,
Mr. Anmol Gupta, Advocate and
Mr. Rhythm Katyal, Advocate,
for the petitioner.

Dr. Anmol Rattan Singh Sidhu, Senior Advocate with
Mr. Mandeep Singla, Advocate and
Mr. Kamal Satija, Advocate,
for the respondent.

LAPITA BANERJI, J.

In the instant writ petition, the petitioner who was the successful bidder in the E-auction of the secured asset, conducted by the respondent bank has *inter alia*, prayed for issuance of a writ in the nature of certiorari for quashing letter dated June 14, 2024 (Annexure P-1) (hereinafter 'impugned letter') issued by the respondent-bank whereby the sale transaction of the Subject Property was cancelled and the initial deposit of Rs.11,14,64,802/- being 25% of the total sale price was forfeited.



FACTUAL MATRIX

2. The respondent-bank issued an E-auction Sale notice dated February 08, 2024 (Annexure P-2) (hereinafter referred to as '*E-auction Notice*') for sale of the secured asset being Commercial Land and Hotel building situated at Plot No. 15, Industrial Area, Phase-1, Chandigarh on a 'as is where is basis'. On February 08, 2024, pursuant to the E-auction notice, the petitioner submitted his bid online for Rs.44,56,82,700/-. The said bid was declared to be successful by the respondent bank and in accordance with the terms and conditions of the E-auction Notice, the petitioner made payment of Rs.4,41,27,000/- towards the Earnest Money Deposit (for short "*EMD*") being 10% of the reserved price which had been fixed at Rs.44,12,70,000/-. Vide e-mail dated March 15, 2024 (Annexure P-3), the Authorized Officer of the respondent bank confirmed the receipt of the EMD and declared the petitioner to be the successful bidder. As per the terms and conditions of the E-auction notice the successful bidder was required to deposit 25% of the sale price (inclusive of EMD) immediately on the date of the sale or the next working day. On March 16, 2024, the petitioner deposited a sum of Rs.6,72,93,675/- being 15% of the bid amount. Thus, the petitioner had deposited a total sum of Rs.11,14,64,802/- being 25% of the entire sale price.

3. As per Clause 14 of the E-auction notice, the petitioner was required to deposit remaining 75% of the bid amount within 15 days from the date of confirmation of sale. Therefore, the petitioner was required to deposit the remaining 75% by March 30, 2024. The petitioner firm wrote a letter of request dated March 30, 2024 seeking extension of



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90 days to deposit the balance amount. The petitioner's request was acceded to by the respondent-bank vide letter dated March 30, 2024 (Annexure P-6) and the petitioner was required to deposit the balance sale consideration on or before the extended date i.e. June 13, 2024.

PETITIONER'S CASE

4. Mr. Batra, learned counsel appearing on behalf of the petitioner submitted that the petitioner was ready and willing to deposit 75% of the remaining amount in terms of E-auction notice and had also gotten a draft dated March 30, 2024 (Annexure P-5) prepared for the balance sum of Rs.33,42,17,898/-. However, since it transpired that insolvency resolution proceedings which had been initiated against the debtor company under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "*the Code*") before the NCLT, Chandigarh were pending at the time of on-going process of E-auction and an interim moratorium under Section 96 of the Code was operating against the assets of the debtor company, the balance sum was not paid.

5. He further submitted that the respondent bank did not mention the same in the E-auction notice or anytime after the confirmation of sale to the petitioner/successful bidder. The petitioner aggrieved by the lack of transparency and also material suppression/concealment on the part of respondent bank had issued through their Advocates a legal notice on April 18, 2024 (Annexure P-7) calling upon the bank to confirm whether it was in a position to hand over the physical possession of the secured asset/auctioned property to the petitioner. The petitioner demanded that the entire amount deposited with the respondent-bank i.e., 25% of the bid amount be refunded with



interest thereupon along with damages suffered by the petitioner due to the illegal action on part of the respondent bank by suppression of material facts, in the alternative. However, the respondent bank failed to respond to the said legal notice.

6. It was further submitted by learned counsel for the petitioner that instead of providing details with regard to the encumbrances relating to the secured asset in question or the impending litigations with regard to said asset, the respondent bank insisted that the balance 75% of the bid, amounting to Rs.33,42,17,898/- be deposited by the petitioner within the extended time period i.e. on or before June 13, 2024. The bank had also insisted vide e-mails dated May 06, 2024, May 07, 2024, May 22, 2024 and June 10, 2024, for payment of balance amount. Moreover, during the meetings dated June 04, 2024 and June 06, 2024 held between the representatives of the petitioner company and the respondent bank, the aforesaid payment of 75% was insisted upon. Vide communication dated June 11, 2024, the bank insisted that the balance amount of Rs.33,42,17,898/- should be deposited urgently within the stipulated period (i.e by June 13, 2024) so that the sale could be concluded within the stipulated time line or else it threatened to forfeit the amount deposited by the petitioner relating to the sale. Therefore, he submitted that the bank had acted fraudulently and illegally by not only suppressing material facts but also acted arbitrarily by threatening to forfeit the deposited amount.

RESPONDENT'S CASE

7. Mr. Sidhu, learned Senior counsel appearing on behalf of respondent bank submitted that the petitioner participated in the E-



auction held on February 28, 2024 and was declared to be the successful bidder on March 15, 2024. The letter confirming sale was issued to the petitioner on the same day i.e. March 15, 2024. The petitioner had deposited 25% of the bid amount by March 16, 2024 and was required to deposit remaining 75% amount within next 15 days i.e by March 30, 2024. The petitioner was unable to deposit the remaining 75% amount by March 30, 2024 and vide letter of the same date had requested for extension of time to pay the balance 75% which was acceded to by the respondent bank on the same date itself. The respondent bank had extended the stipulated time for payment so that the petitioner could deposit the balance 75% of the bid amount. Therefore, the petitioner was under an obligation to deposit the remaining 75% by June 13, 2024 (extended date). Despite availing the aforesaid extension and despite numerous requests/reminders being made on behalf of the respondent bank, the petitioner willfully failed to deposit balance of 75% amount within the stipulated period. Therefore, the respondent bank had no option but to cancel the bid and forfeit the amount already deposited by the petitioner.

8. Strong reliance was placed on Clause 14 of the terms and conditions of the E-auction notice which reads as under :

“Clause 14

The successful bidder so declared by the Authorized Officer shall deposit 25% of the Sale price (inclusive of EMD) in Cash/DD/RTGS/NEFT/Internet Transfer/Cheque subject to realization, immediately on the sale day or not later than next working day with the Authorized Officer in the account bearing No.787101980050000 of the Authorized Officer, Union Bank of India, SCO 137-138, Sector-8 C, Chandigarh Branch, IFSC Code UBIN0578711 and the balance 75% of the Sale Price on or before the 15th day of confirmation of sale or within such extended period as



agreed upon in writing between the secured creditor and the purchaser, in any case, not exceeding three months.

In the event of failure to tender 25% (15% + EMD) of the Sale price as per the terms of Sale by the successful bidder, the EMD so deposited by him shall be forfeited to secured creditor and the bid accepted shall stand cancelled automatically and the defaulting bidder shall neither have claim on the property nor on any part of the sum for which it may be subsequently sold.

In default of payment of balance amount of purchase price before 15 days from the date of confirmation of sale by the Secured Creditor or such extended period as may be mutually agreed upon between the secured creditor and the purchaser (not exceeding 03 months) the deposit of 25% of the amount of sale price made shall be forfeited and the property shall forthwith be sold again and the defaulting purchaser shall neither have claim on the property nor on any part of the sum for which it may be subsequently sold.”

9. Therefore, it was contended on behalf of the respondent bank that the petitioner was fully aware of the conditions of E-auction notice at the time of participating in the E-auction and consciously chose not to deposit the remaining 75% of the bid amount. Hence, the respondent bank neither acted illegally or arbitrarily in forfeiting the amount deposited. Reference was made to the supreme Court judgments reported in “*Authorized Officer, Central Bank of India v. Shanmugamelu*” being Civil Appeal Nos. 235-236 of 2024 and in “*Union Bank of India v. Rajat Infrastructure Pvt Ltd.*” being Civil Appeal No. 1902 of 2020 to contend that any dilution of the forfeiture clause provided under Rule 9 (5) of the SARFAESI Rules would result in the entire auction process under the SARFAESI Rules being set at naught by mischievous auction purchaser(s) through sham bids and thereby undermine the overall objective of the law for promotion of financial stability, reducing of NPAs and fostering of a more efficient and streamlined mechanism for recovery of bad debts. It was also submitted



that it was a well settled proposition of law that if a statute described or required a particular thing to be done in a particular manner then the same had to be done in that particular manner or not at all and other methods of performance by the parties were necessarily forbidden.

10. Learned Senior Counsel further contended that the property was sold only on a “*symbolic basis*” and the entire fault was on part of the petitioner who had defaulted in making payment of the balance 75% of the bid amount. The previously deposited 25% had been forfeited as under Clause 14, it was unambiguously stipulated that in the event the bidder defaulted in payment of entire sale price within the stipulated period, the previously deposited amount would be forfeited and the property would be put to auction again immediately. The defaulting bidder would have no claim on the property or on any part of the sum for which the property may be subsequently sold. Therefore, the petitioner was under an obligation to make the payment of remaining amount without any delay or laches. The obligation on part of the bank to hand over the property would have only arisen after the entire sale proceeds were handed over to the bank. The Demand Draft that the petitioner had purportedly got ready to show its readiness and willingness to the performance of the contract was of no consequence to the respondent bank as the said draft had not been handed over to the bank.

11. It has been denied on behalf of the respondent bank that NCLT proceedings were pending at the time of issuance of E-auction notice dated February 08, 2024 or on the date on which the E-auction was conducted i.e February 28, 2024 as the proceedings before NCLT, Chandigarh were filed only on February 28, 2024 by one Ashish Mohan



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Gupta which lay with the Registry being defective till March 27, 2024. Therefore, no petition was pending before the NCLT, Chandigarh prior to March 27, 2024.

12. The reply filed on behalf of the respondent bank was relied upon to suggest that the petitioner was acting in collusion with the said guarantor-Ashish Mohan Gupta who was also an erstwhile director of the debtor company which owned the secured asset that had been put to auction. As the petitioner was unable to pay the remaining amount, collusive proceedings had been initiated by the said Ashish Mohan Gupta at the behest of the petitioner. Therefore, the respondent bank was wholly justified in cancelling the bid and forfeiting the amount.

FINDINGS OF THE COURT

13. This Court has heard arguments of the parties and perused the material on record.

14. It transpires that admittedly the sale was confirmed in favour of the petitioner on March 15, 2024 and the petitioner had deposited 25% of the bid amount with the respondent bank on March 16, 2024. Admittedly, the time to pay the remaining 75% was extended from March 30, 2024 to June 13, 2024 by the respondent bank. Admittedly, prior to June 13, 2024 (the deadline for depositing the remaining 75% of the bid amount) an insolvency petition was filed by said Ashish Mohan Gupta (Director of the borrower/debtor company). Therefore, Insolvency resolution proceedings had been initiated before June 13, 2024. Admittedly the defects had been removed by March 27, 2024 i.e., prior to March 30, 2024 the date on which the petitioner was initially required to pay the balance sum, even if no extension was granted to it.



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15. Section 96 of the Insolvency and Bankruptcy Code, 2016 reads as under :-

SECTION 96- INTERIM MORATORIUM

- (i) *When an application is filed under Section 94 or Section 95 -*
- (a) *an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and*
- (b) *during the interim-moratorium period—*
- (i) *any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and*
- (ii) *the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.*
- (2) *Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.*
- (3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”*

Therefore, once an insolvency petition against the debtor company is filed in the NCLT an interim moratorium would operate in relation to all the debts of the company under Section 96, till said application is either admitted or rejected. The said petition before NCLT is pending till date and admittedly the interim moratorium is operating. Hence, all the proceedings in respect of any debt are to remain stayed by operation of law.

16. The IBC is a complete Code in itself and once the interim moratorium is in place and an interim resolution professional (IRP) is appointed to deal with the assets of the debtor company, the respondent



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bank would not be in a legal position to either issue the Sale Certificate or secure physical possession of the property through the Tehsildar for the purpose of handing over the same to the petitioner/auction purchaser.

17. It was vehemently argued on behalf of the respondent bank that the petitioner had failed to perform its part of obligation and therefore, the bank rightly forfeited the deposited amount. Neither in the reply filed to the writ petition nor in the oral arguments addressed on behalf of the bank the question whether the respondent-bank was in a position to perform its corresponding obligation of handing over the property/secured asset to the petitioner/auction purchaser upon payment of the entire bid amount was paid, had been addressed.

18. It is not lost upon the mind of this Court that the learned counsel appearing on behalf of the respondent bank vehemently pointed out the failure on part of the auction purchaser to deposit the balance amount without referring to the corresponding obligation of the bank stipulated in Clause 16 of the auction notice. Clause 16 of the auction notice reads as under :

“CLAUSE 16

On confirmation of sale by the secured creditor and if the terms of payment have been complied with by the successful bidder, the Authorized Officer shall issue a certificate of sale of moveable/immoveable property in favour of the purchaser in Appendix-III/V to the Security Interest (Enforcement) Rules, 2002.”

19. As the respondent is statutorily barred from taking any step till such time the insolvency petition was rejected by NCLT, this Court has no hesitation to hold that the contract of sale that the respondent bank had sought to enter with the auction purchaser stood frustrated due to the



intervening legal impossibility. The insolvency proceedings having been initiated against the debtor-company by an operational creditor and the interim moratorium being in place debarred the bank from issuing the Sale Certificate, in the present circumstances.

20. It is settled law that applicability of Section 56 of the Indian Contract, 1872 is not limited to cases of physical impossibility, but also includes cases of legal impossibility. Section 56 of the Indian Contract Act, 1872, is set out hereinafter:

“56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do an act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.— Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.”

21. A beneficial reference is made to the three-judge bench judgment of the Supreme Court in ***Satyabrata Ghose v. Mugneeram Bangur & Co.***, reported as (1953) 2 SCC 432. Relevant extract of which is reproduced herein below:

“10. Although various theories have been propounded by the Judges and jurists in England regarding the juridical basis of the doctrine of frustration, yet the essential idea upon which the doctrine is based is that of impossibility of performance of the contract; in fact impossibility and frustration are often used as interchangeable expressions. The changed circumstances, it is said, make the performance of the contract



impossible and the parties are absolved from the further performance of it as they did not promise to perform an impossibility. The parties shall be excused....

Xxx

We hold, therefore, that the doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of Section 56 of the Contract Act. It would be incorrect to say that Section 56 of the Contract Act applies only to cases of physical impossibility and that where this section is not applicable, recourse can be had to the principles of English law on the subject of frustration.

Xxx”

22. The Apex Court in a recent judgment in ***Loop Telecom & Trading Ltd. v. Union of India, reported as (2022) 6 SCC 762*** while placing reliance on judgment in ***Satyabrata Ghose (supra)*** reiterated that the applicability of Section 56 of the Contract Act is not limited to cases of physical impossibility and with regard to the law of frustration of contract in India, the only test which should apply “is that of supervening impossibility or illegality of the act agreed to be contractually done”. Furthermore, the doctrine underlying Section 56 is to be understood by construing the word “impossible” in its practical sense, not just in its literal sense.

23. Therefore, the bank not being in a position to hand over the secured asset to the auction purchaser even if the remaining 75% of the bid amount was paid, could not have forfeited 25% of the deposited amount. This is not the case where the petitioner has approbated and reprobated after availing of the extended time period of payment. The bank has acted in an arbitrary and illegal manner by claiming that the entire bid amount be deposited on one hand and on the other hand, avoiding the question of the supervening legal impossibility debaring



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them from issuance of the Sale Certificate or handing over the physical possession of the property to the petitioner due to the existence of moratorium.

24. After analyzing the aforesaid facts and the position of law, this Court finds it perplexing that the bank has proceeded to forfeit the initial deposit of 25% without being in a position to perform its corresponding obligation. Such a conduct by a nationalized bank is arbitrary, illegal and in colourable exercise of power, that is not at all appreciated. Furthermore, no material was brought on record by the respondent bank to corroborate the bald allegation that the petitioner/auction purchaser, due to its lack of funds had fraudulently setup the operational creditor-Ashish Mohan Gupta to delay auction sale.

25. Consequently, this Court directs that the aforesaid amount of Rs.11,14,64,802/- be refunded to the petitioner/auction purchaser within a period of four weeks along with interest @ 10% per annum. Additionally, the respondent bank shall pay a sum of Rs.50,000/- to the petitioner as costs, for dragging it into this harassive/vexatious litigation.

26. Pending application(s), if any, shall also stand disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

OCTOBER 04, 2024
Shalini

Whether speaking/reasoned : Yes
Whether reportable : Yes