



2025:CHC-OS:204

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

RESERVED ON: 11.09.2025
DELIVERED ON: 25.09.2025

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

WPO 1235 OF 2024

COTTON CASUALS INDIA PRIVATE LIMITED & ORS.

VERSUS

THE STATE OF WEST BENGAL & ORS.

Appearance:-

Mr. Jaydip Kar, Sr. Adv.
Mr. Deepnath Roy Chowdhury, Adv.
Mr. Debdeep Sinha, Adv.
Mr. Dibesh Dwivedi, Adv.

..... For the Petitioners

Mrs. Sipra Majumder, Adv.
Ms. Debarati Sen (Bose), Adv.

..... For the State

Mr. Biswajit Mukherjee, Adv.
Mr. Gurudas Mitra, Adv.

..... For KMC

JUDGMENT

Gaurang Kanth, J. :-

1. The Petitioner has preferred the present writ petition seeking an order, inter alia, for quashing and/or setting aside the demands raised by the Respondent No. 3 towards outstanding property tax together with interest and penalty, as communicated vide four separate letters, all dated 18.11.2014; and for issuance of an appropriate direction upon the



Respondents to effect the mutation of the four leasehold factory units, being Nos. A-201, A-202, A-301 and A-302, admeasuring in aggregate 45,208 sq. ft. together with six car parking spaces, situated at Paridhan Garment Park, 19 Canal South Road, Tangra, Kolkata – 700015, West Bengal, in the name of the Petitioners, upon payment of property tax from the date of purchase, i.e., 07.05.2022, without levy of any interest and/or penalty.

2. The facts leading to the present writ petition are as follows:
3. On 18.02.2018, the Bank of India filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Kolkata Bench (hereinafter referred to as “NCLT, Kolkata”) against *M/s Enfield Apparels Ltd.* seeking initiation of the Corporate Insolvency Resolution Process (CIRP), as the said company had defaulted in repayment of its debts amounting to Rs.42,40,76,787.43/-. By order dated 06.08.2018, the NCLT, Kolkata appointed Mr. Kanchan Dutta as the Resolution Professional. Since no resolution plan was received for the revival of *M/s Enfield Apparels Ltd.*, the NCLT, Kolkata, vide order dated 04.04.2019, directed the liquidation of the company and appointed Mr. Kanchan Dutta as the Liquidator.
4. In May 2019, the Liquidator issued e-auction sale notices in leading newspapers for the sale of certain assets of *M/s Enfield Apparels Ltd.*, namely, the factory premises comprising four modules of 11,302 sq. ft. each (totaling 45,208 sq. ft.), six open car parking spaces, and the plant and machinery situated at Paridhan Garment Park.
5. Although the Petitioners intended to acquire the said property and participate in the e-auction process, certain irregularities prevented their



participation. The e-auction was conducted on 11.06.2019, and the sale was confirmed in favour of the sole bidder, *M/s Vedant Fashions Limited*.

6. Petitioner No. 1 challenged the said auction before the NCLT, Kolkata. By orders dated 24.02.2020 and 12.03.2020, the NCLT, Kolkata set aside the earlier auction sale and confirmed the sale in favour of Petitioner No. 1 for a bid price of Rs. 15.50 Crores.
7. Subsequent litigation ensued between the Liquidator and the Petitioners regarding the liability to pay transfer fees to the Lessor, i.e, West Bengal Industrial Development Corporation Ltd (WBIDC) before the NCLT, Kolkata and the NCLAT, New Delhi.
8. Vide order dated 13.10.2020 in IA (IB) No.782/KB/2020 in CP(IB)No. 338/KB/2018, the NCLT permitted Petitioners No. 2 to 5 to complete the sale transaction jointly with Petitioner No. 1.
9. Upon payment of the sale consideration and the transfer fee, possession of the subject property was handed over to the Petitioners on 19.01.2022. Thereafter, by four separate Deeds of Assignment, all executed on 07.05.2022, the leasehold rights in the factory premises were transferred in favour of Petitioners No. 1 to 5 as follows:
 - a) By Deed of Assignment dated 07.05.2022, Factory Module A-202 along with car parking spaces Nos. 96 and 97 was transferred to Petitioner No. 1.
 - b) By Deed of Assignment dated 07.05.2022, Factory Module A-301 along with car parking space No. 98 was transferred to Petitioner No. 2.
 - c) By Deed of Assignment dated 07.05.2022, Factory Module A-201 along with car parking spaces Nos. 94 and 95 was transferred to Petitioner No. 3.



- d) By Deed of Assignment dated 07.05.2022, Factory Module A-302 along with car parking space No. 99 was transferred jointly to Petitioners No. 4 and 5.
10. Following the execution of the aforesaid Deeds of Assignment, the Petitioners, vide four separate letters dated 29.08.2024, applied to Respondent No. 3 for mutation of the said properties in their respective names. In the said applications, the Petitioners specifically stated their willingness to discharge outstanding property tax liabilities accruing from the date of their purchase, i.e., 07.05.2022.
11. Respondent No. 3, vide four separate letters dated 18.11.2024, informed the Petitioners that the mutation would be processed only upon payment of outstanding property tax together with interest and penalty, including arrears pertaining to the erstwhile owner, *M/s Enfield Apparels Ltd.* A consolidated demand of Rs.1,23,84,142/- was raised, apportioned as follows: Rs. 24,48,118/- against Petitioner No. 1; Rs. 24,48,778/- against Petitioner No. 2; Rs. 24,48,118/- against Petitioner No. 3; and Rs. 50,48,128/- against Petitioners No. 4 and 5. This demand was for the period from 2nd Quarter of 2008 to 2nd Quarter of 2024.
12. Aggrieved by the said demand requiring them to discharge the arrears of property tax of the erstwhile owner, the Petitioners have preferred the present Writ Petition.

Submission on behalf of the Petitioner

13. Mr. Jaydeep Kar, learned Senior Counsel appearing for the Petitioners, at the very outset, submits that the Petitioners do not dispute their liability to pay property tax from 19.01.2022 onwards, i.e., from the date when possession of the property was handed over to them. The dispute concerns



only the period prior to 19.01.2022. Learned Senior Counsel further submits that the Petitioners are auction purchasers. Neither the e-auction sale notice nor the terms and conditions contained in the Expression of Interest (EOI) made any mention of outstanding property tax dues. No such liability was ever identified by the Official Liquidator or the Committee of Creditors of *M/s Enfield Apparels Ltd*

14. Learned Senior Counsel further draws attention to the various clauses of EOI and the terms and conditions of sale, wherein it is specifically stipulated that *"the assets of the Corporate Debtor are being sold on 'as is where is, whatever there is and without recourse' basis and as such the sale/disposition is without any kind of warranties or indemnities."* He submits that this stipulation clearly related to the quality, quantity, and condition of the assets and did not extend to encumbrances, liens, or statutory dues such as property tax. The said terms never imposed any obligation on the auction purchaser to conduct any search for encumbrances or claims. Therefore, the condition of sale cannot be construed to saddle the Petitioners with liability for municipal tax arrears pertaining to the period prior to the transfer of possession.
15. Learned Senior Counsel next submits that the Petitioners, being auction purchasers of the assets of a company in liquidation, are governed by the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC). The IBC is a self-contained code providing a comprehensive mechanism for corporate insolvency resolution and liquidation. He places reliance upon the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, to contend that it is the statutory duty of the Liquidator to examine the assets and liabilities of the corporate debtor and



appropriately disclose the same to prospective purchasers. According to him, the Respondent Corporation is not a preferential creditor but falls within the category of an *operational creditor* under the IBC. The distribution of sale proceeds between secured and unsecured creditors is governed strictly by the provisions of the IBC, and in terms of Section 238 thereof, the IBC has an overriding effect over all other laws, including the Kolkata Municipal Corporation Act, 1980.

16. It is submitted that all claims against the corporate debtor in liquidation are required to be filed before the Liquidator under the provisions of the IBC, 2016. Once the assets are sold, it is the statutory duty of the Liquidator to distribute the sale proceeds among the creditors strictly in accordance with the statutory waterfall mechanism. Consequently, any liability towards outstanding municipal taxes up to the date of sale cannot be fastened upon the auction purchaser, who has bona fide acquired the property for valuable consideration. Such liability, if any, is required to be discharged by the Liquidator out of the sale proceeds realized from the auction.
17. Learned Senior Counsel further submits that the Petitioners were not made aware of any outstanding liability towards property tax. Acting under the bona fide belief that no such liability existed, the Petitioners paid Rs. 15.50 Crores as sale consideration, Rs.3.49 Crores (inclusive of GST) as transfer fee to the West Bengal Industrial Development Corporation, and thereafter invested substantial expenditure towards refurbishment of the factory premises.
18. In support of his submissions, learned Senior Counsel places reliance upon the following judicial precedents: ***AI Champdany Industries Ltd. v.***



Official Liquidator & Anr., reported in ***(2009) 4 SCC 486***; ***IISCO Ujjain Pipe and Foundry Company Ltd. v. Ujjain Nagar Palika Nigam***, reported in ***(2023) 8 SCC 138***; ***Raman Roadways Pvt. Ltd. v. State of Maharashtra***, reported in ***2021 SCC OnLine Bom 534***; ***Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.***, reported in ***(2021) 9 SCC 657***; ***Kolkata Municipal Corporation v. Grasim Industries (APO 228/2018)***; ***Grasim Industries Ltd. v. Kolkata Municipal Corporation***, reported in ***2018 SCC OnLine Cal 9630***; ***Principal Commissioner of Income Tax v. Monnet Ispat & Energy Ltd.***, reported in ***(2018) 18 SCC 786***; and ***Bhatpara Municipality v. Nicco Eastern Pvt. Ltd.***, reported in ***2021 SCC OnLine NCLAT 612***.

19. On the strength of the above submissions and authorities, learned Senior Counsel prays that the writ petition be allowed and the impugned demand for arrears of property tax prior to 19.01.2022 be set aside.

Submission on behalf of the Respondent

20. Mr. Biswajit Mukherjee, learned Counsel for the Respondent Corporation, draws the attention of this Court to various clauses of the EOI to contend that, at the time of purchase, it was incumbent upon the Petitioners to exercise due diligence with respect to the encumbrances attached to the property. From a plain reading of the EOI, it is evident that the purchaser was required to conduct due diligence at every stage of the process. The EOI and the Sale Notice specifically stated that the assets of the Corporate Debtor were being sold on an “*as is where is, whatever there is and without recourse*” basis. Therefore, it was the duty of the Petitioners, as auction purchasers, to ascertain the existence of any encumbrances, liabilities, or dues attached to the property prior to participating in the auction.



- 21.** Learned Counsel places particular emphasis on Clause 7.1.10 of the EOI, wherein it was categorically mentioned that *“the reserve price for the sale of the assets of the Company is exclusive of all taxes, levies, duties, registration fees or any other fees.”* According to him, this clause is a clear indication from the Official Liquidator that the reserve price excluded all statutory dues, including taxes. Consequently, the Petitioners were obliged to conduct due diligence with the relevant authorities regarding any outstanding dues. Learned counsel contends that their failure to do so, cannot absolve them of the liability to pay outstanding property tax.
- 22.** It is further submitted that, under Section 232 of the Kolkata Municipal Corporation Act, 1980, outstanding property tax constitutes the *first charge* on the property. Therefore, the Respondent Corporation has a statutory right to recover arrears of property tax from the current owner. Unless such dues are cleared, the Respondent is legally restrained from effecting mutation of the property. Since the charge created under law runs with the property, the Respondent Corporation is fully entitled to enforce recovery against the Petitioners, as the present owners.
- 23.** Learned Counsel further contends that the property tax collected by the Corporation is not merely a fiscal measure but is intrinsically connected to the discharge of essential municipal functions such as water supply, sewage treatment, garbage disposal, road maintenance, healthcare, education, and heritage conservation. The collection of property tax is therefore vital to public welfare, and the Respondent Corporation cannot be deprived of its legitimate dues, which are meant to serve the larger public interest.



24. Reliance is placed on the judgment of a three-Judge Bench of the Hon'ble Supreme Court in *K.C. Ninan v. Kerala State Electricity Board*, (2023) 14 SCC 431, wherein it was held that a sale on an "as is where is" basis postulates that the purchaser acquires the asset together with all its existing rights, obligations, and liabilities. Accordingly, when a property is sold on such terms, the encumbrances attached to the property automatically pass on to the purchaser.
25. Learned Counsel for the Respondent finally submits that the fact that the Petitioners purchased the property in liquidation proceedings under the Insolvency and Bankruptcy Code is of no consequence in the present matter. What governs the rights and obligations of the parties are the explicit terms and conditions of the EOI and Sale Notice. The Petitioners, having participated in the auction with full notice of these conditions, cannot now seek to avoid liability for outstanding dues. The Official Liquidator had sufficiently cautioned bidders through various clauses that they required to conduct due diligence regarding both the physical condition and encumbrances upon the assets. Failure to do so is attributable solely to the Petitioners' omission.
26. With these submissions, learned Counsel for the Respondent prays for dismissal of the present writ petition.

Legal Analysis

27. This Court has heard the submissions advanced by the learned Counsel for the parties and has carefully perused the documents placed on record. The Court has also considered the judgments cited by both sides in support of their respective contentions.



28. The material facts are not in dispute. The Petitioners are auction purchasers of the premises in question. Possession of the premises was handed over to them on 19.01.2022, and Deeds of Assignment were executed in their favour on 07.05.2022. The Petitioners have unequivocally accepted their liability to pay property tax with effect from 19.01.2022. Upon consideration of the pleadings, the submissions of learned Counsel for the parties, and the documents on record, the following issues arise for determination in the present writ petition:

- 1. Whether the Respondent Corporation is justified in withholding or rejecting the Petitioners' applications for mutation of the premises on the ground of non-payment of such outstanding property tax.**
- 2. Whether the Petitioners, being auction purchasers of the premises in question, are liable to discharge the arrears of property tax pertaining to the period prior to the auction sale and delivery of possession.**

29. In order to adjudicate upon the issues framed, it is necessary to consider the legal principles laid down in judicial precedents cited by the learned Counsel for both sides. The authorities relied upon not only elucidate the scope of liability of an auction purchaser towards pre-existing statutory dues but also clarify the interplay between the Insolvency and Bankruptcy Code, 2016 and municipal laws governing property tax. This Court shall, therefore, proceed to analyse the ratio of the judgments placed on record and assess their applicability to the facts of the present case.

30. The first issue that arises for consideration is **whether the Respondent Corporation is justified in withholding or rejecting the Petitioners'**



applications for mutation of the premises on the ground of non-payment of such outstanding property tax.

31. Section 183(5) of the Kolkata Municipal Corporation Act, 1980, governs the procedure for mutation upon transfer of ownership.
32. **Prior to the 1997 amendment**, the proviso to Section 183(5) provided:

"Provided that nothing in this sub-section shall be construed to mean that mutation in a case, where there is arrear of any dues to the Corporation on account of the transferor or the predecessor-in-interest of the applicant, shall be refused."

Post the 1997 amendment (w.e.f 22.12.1997), the proviso was revised as follows:

"Provided that nothing in this sub-section shall derogate from the power of the Corporation to refuse mutation in a case where there is arrear of any dues to the Corporation on account of the transfer or the predecessor-in-interest of the applicant".

33. In the present case, the Respondent Corporation, acting under the post-amendment statutory provision, was fully justified in refusing to effect mutation on account of the outstanding property tax dues. Such refusal is therefore lawful, reasonable, and entirely in conformity with the statutory framework.
34. The next question to be considered is **whether the petitioners, being auction purchasers of the premises in question, are liable to discharge the arrears of property tax pertaining to the period prior to the auction sale and delivery of possession.**
35. Learned Senior Counsel for the Petitioner has contended that the sale in question was conducted under the IBC, 2016 and, in view of Section 238 thereof, the provisions of the IBC have an overriding effect on all other enactments, including the Kolkata Municipal Corporation Act. It is,



therefore, argued that any outstanding dues against the corporate debtor, including municipal dues, are required to be recovered only in accordance with the provisions of the IBC and not otherwise.

36. Per contra, learned Counsel for the Respondent Corporation has submitted that as per the KMC Act, the property tax constitutes the first charge on the property. Hence the statute under which the sale is conducted is of no material consequence. What is relevant is whether the auction purchaser was put to notice of the outstanding municipal dues which is attached to the sale asset. It is urged that if the purchaser acquires the sale asset with full knowledge of such liability, he cannot subsequently claim immunity from discharging the same.

37. It is necessary, in this context, to note that under Section 232 of the Kolkata Municipal Corporation Act, outstanding property tax in respect of any land or building constitutes the first charge upon such land or building. The said section reads as follows:

“Section 232. Property tax on lands and buildings to be first charge on property.

The property tax on lands and buildings due from any person shall, subject to the prior payment of land revenue (if any) due to the Government thereupon, be a first charge upon the land or the building belonging to such person and upon the movable property (if any) found within or upon such land or building.”

38. The property tax, as per the KMC Act is an encumbrance on the property itself. The liability is, therefore, statutory encumbrance in nature and attaches itself to the property. This is not the personal liability of the property owner. The KMC Act further empowers the Corporation to recover the outstanding dues by way of attachment and sale of the property or the movable assets lying therein.



- 39.** On the other hand, the IBC envisages that liquidation proceedings are to be carried out in accordance with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which prescribe the procedure for submission of claims to the Liquidator, verification thereof, and distribution of the liquidation estate amongst the creditors. In such proceedings, creditors are ordinarily required to lodge their claims before the Liquidator, who, after collating and verifying the same, distributes the proceeds of the liquidation estate in the order of priority laid down under Section 53 of the IBC. For this purpose, the Liquidator sells the assets of the Corporate Debtor and records the liabilities to the best of his knowledge. However, since liquidation is not an exercise of revival but of realisation and distribution, it is possible that certain liabilities may not be fully known or disclosed at the time of sale. Consequently, assets are sold on an “as is where is, whatever there is” basis, meaning that the purchaser acquires the property along with such liabilities or encumbrances as may be attached to it, save and except where the terms of sale provide otherwise.
- 40.** Where a statutory first charge is created on the property, such as in respect of property tax under Section 232 of the Kolkata Municipal Corporation Act, 1980, the municipal authority is entitled to enforce such charge independently in accordance with the statutory mechanism provided therein. In such a situation, there is no inconsistency between the provisions of the IBC and the KMC Act, and, therefore, the overriding effect of Section 238 of the IBC is not attracted
- 41.** Where a statutory charge is created on the property, as in the case of property tax under the KMC Act, the Respondent corporation may either



submit its claim before the Official Liquidator under the IBC or enforce the charge independently through the statutory mechanism. In such cases, there is no inconsistency between the IBC and the KMC Act, and Section 238 of the IBC is not attracted.

42. If the Respondent Corporation opts to recover dues through the statutory mechanism, the auction purchaser stands on the same footing as any other purchaser. The material consideration is not the statute under which the auction is held, but whether the purchaser was put on notice of existing liabilities.
43. The liability of an auction purchaser is no longer *res integra*. In *Ahmedabad Municipal Corporation v. Haji Abdul Gafur Haji Hussenhbai* (1971) 1 SCC 757 the Hon'ble Supreme Court held that a purchaser takes the property subject to *caveat emptor*. However, subsequently in *AI Champdany and IISCO Ujjain Pipe (supra)*, the Court clarified that unless the purchaser is specifically put on notice of statutory dues, or the sale notice expressly provides that the property is subject to such liabilities, the burden of such dues cannot be fastened upon him.
44. In view of the aforesaid authorities, this Court is of the considered opinion that, irrespective of whether the sale is conducted under the IBC or under any other statute, an auction purchaser who had no notice of pre-sale liabilities cannot be saddled with such dues. The doctrine of *caveat emptor* undoubtedly applies to auction sales, but its application is contingent upon the purchaser having been put to sufficient notice of existing liabilities. It is, therefore, necessary to examine the terms and conditions of the Sale Notice and the Expression of Interest to determine whether the Petitioner was put to notice of the outstanding dues or not.



45. A perusal of the Sale Notice reveals that it was specifically stated that the assets of the Corporate Debtor were being sold on an “AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE” basis.
46. The Expression of Interest, in its introductory clause, also reiterates that *“the assets of the Corporate Debtor are being sold on an ‘AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE’ basis, and such sale/disposition is without any kind of warranties or indemnities.”*
47. The relevant clauses of the EOI are extracted hereinbelow.

Clause 6.2.3 of the EOI:

The shortlisted applicants may note that the information memorandum is not an all-inclusive single window source of information relating to the sale asset and is provided solely for guidance of the Applicants. Information Memorandum is a compiled document and may contain such information which may or may not have been independently verified by the Official Liquidator. Hence the Applicants are advised to satisfy themselves in all respects independently before submitting the bids in the e-auction”. As per 6.2.5

Clause 7.1.1 of the EOI

The proposed sale will be conducted on “AS IS WHERE IS WHATEVER THERE IS AND WITHOUT RECOURSE BASIS”

Clause 7.1.3 of the EOI

The Applicant should thoroughly satisfy itself about the nature, conditions and quality of the sale assets. The Liquidator gives no guarantee or warranty as to the title of the sale assets or the conditions of the assets/material of its quality for any specific purpose of use. It



should be clearly understood that no claim, complaints about the title, quality/conditions/fitness for use will be entertained by the liquidator.

Clause 7.1.4 of the EOI

It shall be presumed that the facts shall be taken into consideration by the Applicant while submitting the bid. Even if the Applicant chooses not to inspect or conduct due diligence of the sale assets, it shall be presumed that the Applicant has made himself aware of the physical conditions, market value etc. Of the sale assets and therefore to complain/claim against the same shall be entertained in this regard by the liquidator after the submission of the Bid form.

Clause 7.1.10 of the EOI

The reserve price for the sale of assets of the Company is exclusive of all taxes, levies, duties or any registration fees or any other fees/charge.

Clause 7.1.12 of EOI

The purchaser shall bear and pay the applicable stamp duties, registration fees, and all fees and expenses payable for the registration of documents, texts, GST etc. and all other duties payable in connection with purchase of the sale of assets.

Clause 9.4 of EOI

The information contained in the invitation is substantially based on estimated information, opinions and informations sourced from the stakeholders, public domain and independent third parties. The invitation does not amount to recommendation either expressly or by implication w.r.t the company or other entities mentioned in the invitation. Except where specifically mentioned otherwise, the Liquidator has not independently verified such information and the same is being



provided by the liquidator for information purpose only. The Liquidator does not make any representation or warranty as to the accuracy, reliability, or completeness of such information and does not assume any undertaking to supplement such information as further information becomes available or in light of changing circumstances. The liquidator shall not have any liability under any law, statute, rules or regulations for any representations or warranties (express or implied) contained in or any omissions from this invitation or any other written or oral communication transmitted to the recipient in the course of its evaluation of the proposed financing or otherwise.

Clause 9.5 of the EOI

The invitation is not intended to be the sole or prima facie basis on which intending applicants may submit their bids. The information as contained in the invitation has been prepared to assist the interested applicants in making their own evaluation for the purpose of submission of bids and for no other purpose. The information does not purport to be all inclusive or to contain all information that a prospective investor/entity may require/desire.

Clause 9.7 of the EOI

It is understood that every recipient of this information will perform its own independent investigation, due diligence, and analysis of the proposed financing and the creditworthy of the company based on such information as it deems relevant and without reliance on the Liquidator and this invitation. The liquidator shall endeavor to provide such cooperation as may be appropriate for carrying any due diligence at the cost and expenses of the Applicant. No claim shall lie against the



liquidator with respect to the contents of this invitation. The information contained herein is not a substitute for the recipients investigation, due diligence, and analysis. The recipients of this invitation must check and observe all applicable legal requirements and for the avoidance of doubt receipt of this invitation and the information contained herein may not be taken as discharging the regulatory and statutory responsibilities under the applicable legislation.

Clause 9.9 of the EOI

The terms of the invitation are to be read subject to the Disclaimer. The provisions of this Disclaimer take precedence over any other provisions of the invitations which is inconsistent with or otherwise in conflicts with any provision of this Disclaimer.

48. A plain reading of the Sale Notice and the terms of the Expression of Interest (EOI) makes it evident that the Official Liquidator disclosed the information available to him, but expressly required every bidder to conduct its own independent investigation and due diligence regarding the status of the sale asset. The assets were sold strictly on an “AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE” basis. The clauses extracted above underscore that the responsibility of due diligence was emphasised at every stage. Clause 7.1.10 provides that the reserve price is exclusive of taxes, levies, duties, and other charges indicating that the tax and other charges are not part of reserve price. Clause 9.7 of the EOI stipulates that each bidder must undertake its own investigation, due diligence, and analysis prior to submitting a bid, and that the information furnished by the Liquidator does not substitute for such independent inquiry. It is further clarified that bidders are required to ensure



compliance with all applicable legal and regulatory obligations, and that the information provided cannot be construed as discharging those responsibilities. Accordingly, on a holistic reading, the obligation of due diligence and independent verification of all aspects of the sale asset rested entirely upon the bidders.

49. The Hon'ble Supreme Court, in *Union of India v. Naskapara Jute Mills Co. Ltd.* (1994 (1) SCC 575), examined issues relating to auction sales conducted by the Official Liquidator and held as follows:

"When the Official Liquidator sells the property and assets of a company in liquidation under the orders of this Court and he can not and does not hold out any guarantee or warranty in respect thereof. This is because he must proceed upon the basis of what the records of the company in liquidation show. It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances, and so forth of the immovable property that he proposes to purchase. He can not having after purchasing the property on such terms and then claim diminution in the price on the ground of defect in title or description of the property. The case of the Official Liquidator selling the property of a company in liquidation under the orders of the Court is altogether different from the case of an individual selling an immovable property belonging to himself. There is, therefore, no merit in the application made on behalf of Triputi that there should be a diminution in price or that it should not be made liable to pay interest on the sum of Rs. 1 Crore 98 lakhs."

50. Similarly, the Hon'ble Supreme Court, in *K.C. Ninan v. Kerala State Electricity Board & Anr.* (2023 (14) SCC 431), reiterated the legal principle regarding sales conducted on an "AS IS WHERE IS" basis. The Court held that when assets are sold on such a basis, the purchaser acquires them with full knowledge that they are being sold without any warranties, representations, or indemnities, and that the purchaser alone bears the responsibility of verifying the condition, liabilities, and encumbrances attached to the assets. The legal effect is that the seller or the authority conducting the sale cannot be held liable for undisclosed defects or



liabilities, and the purchaser cannot claim any relief on account of matters which could have been ascertained through due diligence. The relevant paras, reads, inter alia, as follows:

“138. In the present batch of cases, the premises were sold in auction-sales generally held on an "as-is-where-is" basis. A sale on "as-is-where-is basis" postulates that the purchaser would be acquiring the asset with all its existing rights, obligations and liabilities. When a property is sold on an "as-is-where-is" basis, encumbrances on the property stand transferred to the purchaser upon the sale.

.....
143. Thus, the implication of the expression "as-is-where-is" or "as-is-what-is basis" or "as-is-where-is, whatever-there-is and without recourse basis" is not limited to the physical condition of the property, but extends to the condition of the title of the property and the extent and state of whatever claims, rights and dues affect the property, unless stated otherwise in the contract. The implication of the expression is that every intending bidder is put on notice that the seller does not undertake any responsibility to procure permission in respect of the property offered for sale or any liability for the payment of dues, like water/service charges, electricity dues for power connection and taxes of the local authorities, among others.

.....
146. To conclude, all prospective auction-purchasers are put on notice of the liability to pay the pending dues when an appropriate "as-is-where-is" clause is incorporated in the auction-sale agreement. It is for the intending auction-purchaser to satisfy themselves in all respects about circumstances such as title, encumbrances and pending statutory dues in respect of the property they propose to purchase. In a public auction-sale, auction-purchasers have the opportunity to inspect the premises and ascertain the facilities available, including whether electricity is supplied to the premises. Information about the disconnection of power is easily discoverable with due diligence, which puts a prudent auction-purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be implausible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues.

147. In terms of the legal doctrine of caveat emptor, it becomes the duty of the buyer to exercise due diligence. A seller is not under an obligation to disclose patent defects of which a buyer has actual or constructive notice in terms of Section 3 of the Transfer of Property Act, 1882. However, in terms of Section 55(1)(a), in the absence of a contract to the contrary, the seller is under an obligation to disclose material defects in the property or in the seller's title thereto of which he is aware and which a buyer could not with ordinary care discover for himself.”



- 51.** In view of the law laid down by the Hon'ble Supreme Court in the aforementioned cases, it is well-settled that a sale conducted on an "AS IS WHERE IS" basis entails that the purchaser acquires the asset along with all existing rights, liabilities, and obligations. When property is sold on such a basis, any encumbrances or charges attaching to the property stand transferred to the purchaser at the time of sale.
- 52.** In the present case, the sale was conducted on an "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE" basis. In accordance with the principles laid down by the Supreme Court, it must be presumed that all liabilities in respect of the sale asset stood transferred to the Petitioner. The Petitioner was under a legal obligation to conduct due diligence with respect to the asset. Liabilities such as electricity, water, and municipal taxes were ascertainable through reasonable inquiry. Therefore, even if the Petitioner did not conduct such due diligence, the law presumes that he had done so, and he is deemed to have acquired the asset subject to all such obligations.
- 53.** Learned Senior Counsel for the Petitioner, during the course of arguments, relied upon *AI Champdany Industries Ltd.* (supra), *IISCO Ujjain Pipe* (supra), *Raman Roadways* (supra), and *Grasim Industries Ltd.* (supra) to contend that even where an auction sale is conducted on an "AS IS WHERE IS" basis, the auction purchaser cannot be held liable for pre-liquidation charges or statutory dues that were neither disclosed nor brought to the notice of the purchaser.
- 54.** This Court examined these cases in detail.
- (a) In *AI Champdany Industries Ltd.* (supra), the Company had gone into liquidation and its property was sold on an "AS IS WHERE IS" basis.



After the auction, the purchaser was served with a demand notice by the Municipality claiming property tax for the period prior to the sale. The learned Single Judge, while dismissing the writ petition, held that the terms and conditions of sale required bidders to satisfy themselves regarding title and encumbrances and that it was incumbent upon them to enquire into outstanding property tax dues. The Division Bench affirmed this view.

However, the Hon'ble Supreme Court allowed the appeal filed by the auction purchaser, holding that property tax dues do not constitute a charge on the property but are in the nature of a personal liability. The Court explained that the term "*encumbrance*" in the sale notice must be understood as a charge that runs with the property. Since property tax was merely a statutory liability and not a charge on the property itself, the auction purchaser was not obliged to ascertain or discharge it. Further, the Municipality was treated as an unsecured creditor, ranking along with other unsecured creditors, and the Official Liquidator was required to distribute sale proceeds in accordance with the preferential order under Sections 529 and 529A of the Companies Act, 1956.

It is, however, pertinent to note that the decision in ***AI Champdany*** was rendered in the context of Sections 529 and 529A of the Companies Act, 1956, and did not consider Section 232 of the Kolkata Municipal Corporation Act, 1980. In contrast, Section 232 of the KMC Act creates a statutory charge on the property itself. Accordingly, in the present case, the outstanding property tax constitutes a statutory encumbrance that runs with the property, making it recoverable directly from the asset. Unlike in ***AI Champdany***, where the Municipality was treated as an



unsecured creditor, here it is a secured creditor by operation of law. Consequently, the liability in the present case cannot be equated with that in **AI Champdany**, and the principles laid down in that case are distinguishable and not directly applicable.

(b) The Hon'ble Supreme Court in *IISCO Ujjain Pipe* (supra) dealt with a similar issue where the Company had gone into liquidation and its assets were sold by the Official Liquidator through auction. The Municipality's claim for property tax and water tax relating to the pre-liquidation period was admitted, but the claim for the post-liquidation period was rejected. The Company Court, however, directed the Official Liquidator to pay the dues for the post-liquidation period till the conclusion of the auction sale, and the Division Bench affirmed the said order. In appeal, the Hon'ble Supreme Court held that where the sale notice sufficiently warns the purchaser about encumbrances, the liability cannot be avoided, but if there is no such adequate notice, the liability cannot be foisted by a deeming fiction. Upon examining the clauses of the sale notice, the Court found that no sufficient warning had been given and accordingly dismissed the appeal of the Official Liquidator.

However, the present case is clearly distinguishable from **IISCO Ujjain Pipe** (supra) on multiple grounds. In **IISCO Ujjain Pipe**, the Hon'ble Supreme Court was examining the liability of an auction purchaser in the context of the Companies Act, and the provisions of the KMC Act were not under consideration. Moreover, the liability in that case pertained to post-liquidation statutory dues and the Court proceeded on the basis that such liability depended entirely on whether



the purchaser had been given adequate notice in the sale documents. In contrast, the issue in the present case is whether the statutory charge created under Section 232 of the KMC Act is enforceable against the auction purchaser, which requires interpretation of the relevant clauses of the Sale Notice and Expression of Interest in light of the statutory framework.

(c) In *Grasim Industries Ltd.* (supra), the learned Single Judge of this Court, relying on *AI Champdany Industries Ltd.* (supra), held that an auction purchaser is not liable to pay property tax in respect of the period prior to the confirmation of sale. However, as was specifically noticed in that judgment itself, the provisions of Section 232 of the Kolkata Municipal Corporation Act, 1980 were not attracted in that case. In contradistinction, in the present matter, Section 232 of the KMC Act squarely applies. The said provision expressly stipulates that arrears of property tax shall constitute the first charge on the property concerned. Consequently, while the principle laid down in *Grasim Industries Ltd.* would protect an auction purchaser in cases where no statutory charge operates, the same cannot be extended to the present case, where the statute itself creates an overriding first charge on the property in respect of outstanding municipal taxes.

(d) The Judgment of the Bombay High Court in *Raman Roadways* (Supra), relied upon by the Petitioner is not applicable in the present case as in that case the Bombay High Court was considering the liability of the auction purchaser of the vehicles qua the demand of Tax raised by the RTO for the period prior to the auction sale conducted by the Official



Liquidator. The applicability of statutory charge on an auction purchaser was not considered therein.

(e) Similarly in *Ghanshyam Mishra & Sons Pvt. Ltd. (supra)*, the Hon'ble Court was examining the liability of Resolution Applicant qua the past liability of the Corporate Debtor, which is different from the present case.

In that case, the Hon'ble Supreme Court was concerned with the liability of a Resolution Applicant who had taken over the Corporate Debtor under an approved Resolution Plan. The Court held that once such a plan is approved, it is binding on all stakeholders and all past claims stand extinguished unless they form part of the plan. The underlying rationale is that in a resolution process the company is sought to be revived as a going concern, and the Resolution Applicant who invests in the revival must know in advance the exact liabilities he is required to shoulder. If fresh or undisclosed claims are permitted to be raised after approval, the entire financial basis of the plan would be unsettled and the plan would become unworkable. Hence, the law mandates that the Resolution Applicant starts on a clean slate. However, this principle cannot be applied in the case of liquidation. In liquidation there is no revival of the Corporate Debtor; instead, the Liquidator realises and sells the assets of the company and distributes the proceeds among creditors in accordance with Section 53 of the IBC. In this process, the Liquidator collates and discloses liabilities to the best of his knowledge, but there may still be liabilities that are not within his knowledge at the time of sale. For this reason, assets in liquidation are sold on an "as is where is, whatever there is" basis, which signifies that the auction purchaser acquires the property subject to its condition and potential



encumbrances, except as otherwise specifically provided in the terms of sale. An auction purchaser does not step into the shoes of the Corporate Debtor for its revival but merely purchases an asset, and therefore the statutory protection of a clean slate recognized in *Ghanshyam Mishra* for Resolution Applicants cannot be automatically extended to the auction purchaser in liquidation.

55. In view of the detailed discussion herein above, this Court is of the considered view that the Petitioner, being the auction purchaser of the premises in question, is liable to pay the outstanding property tax dues. The Official Liquidator through Sale Notice and EOI has made it very evident and clear that all the bidders are supposed to make their respective bids based on their own investigation and due diligence. As discussed herein above, the Hon'ble Supreme Court in *Union of India* (supra) and *K.C Ninan* (supra), when assets are sold on 'as is where is basis', the purchaser acquires them with full knowledge that they are being sold without any warranties, representations, or indemnities, and that the purchaser alone bears the responsibility of verifying the condition, liabilities, and encumbrances attached to the assets. Further Section 232 of the KMC Act makes the property tax dues as first charge on the property and hence make it an encumbrance attached to the property. Hence, the Petitioner is liable to make the payment towards the outstanding property tax dues for the pre-liquidation period also.

56. In view of the detailed analysis and discussion hereinabove, this Court finds no illegality, arbitrariness, or infirmity in the letters dated 18.11.2024 issued by the Respondent Corporation. The refusal to grant mutation of the four leasehold factory units, being Nos. A-201, A-202, A-301 and A-302,



admeasuring in aggregate 45,208 sq. ft., together with six car parking spaces, situated at Paridhan Garment Park, 19 Canal South Road, Tangra, Kolkata – 700015, West Bengal, in the name of the Petitioners, on account of outstanding property tax and other statutory dues, is fully justified and entirely in accordance with law. The Respondent Corporation acted squarely within its statutory mandate under Sections 183(5) and 232 of the Kolkata Municipal Corporation Act, 1980, and in consonance with the principles of statutory charges and municipal enforcement. Accordingly, the writ petition is dismissed.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)

