

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

COMP No. 12 of 2004

(IN REF:-M/S BHARAT COMMERCE AND Vs INDUSTRIAL LTD. )

*Shri H. Y. Mehta, learned counsel for the petitioner.*

*Shri Shashank Garg, learned Senior Advocate assisted by Shri Rahul Maheshwari learned counsel for the intervener/ M/s Kalindi Associates.*

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Heard on : 04.07.2025.

Pronounced on : 27.09.2025.

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Heard on OLR No.16/2025 and I.A. No.4589/2025.

1. The above mentioned OLR / application is related to same subject matter, seeking confirmation of the sale along with certain other directions, with respect to the property of the Company under liquidation, situated at Plot No. 45-A & B, 47, 48, 51, 52, 54 & 55 (ad-measuring 2,40,800 Sq. ft. in total), Industrial Area, Town No. 2, Rajpura, Punjab.

1.1 The I.A. No. 4589/2025 has been filed on behalf of M/s Kalindi Associates, a registered partnership firm engaged in the real estate business and having its place of business at Rajpura, Punjab.

**Short History of Winding up process of the company under liquidation**

2. The background of the present liquidation process is that the Company under liquidation i.e., M/s Bharat Commerce and Industries Limited, Nagda, District Ujjain became a Sick Industrial Unit. Consequently, the matter was placed before the Board for Industrial and Financial

Reconstruction (hereinafter referred to as, "BIFR"). After detailed deliberations in accordance with law, the BIFR concluded that there was no chance of revival of the Company under liquidation and that it was no longer a viable concern. Accordingly, while passing its final order dated 22.01.2004, the BIFR recommended, in terms of Section 20(1) of Sick Industrial Companies (Special Provisions) Act, 1985 (for short hereinafter referred to as, "SICA") that the matter be referred to this Court for passing an order of winding up in accordance with the provisions of Companies Act.

2.1 This Court *vide* order dated 07.01.2005, issued a notice to the Company under Liquidation to obtain its response on the reference made by BIFR. After due consideration, on 11.07.2005 an order for the winding up of the Company i.e. M/s Bharat Commerce and Industries Limited, was passed.

2.2 The Court appointed the Official Liquidator in terms of Section 449 of the Companies Act, 1956 and also directed the Registrar of this Court to take steps in accordance with Rule 109 of the Companies (Court) Rules, 1959. Thus, began the process of liquidation of the present Company under liquidation.

2.3 This process has continued for a prolonged period since the year 2005.

### **History of the property under disputed in the present I.A./OLR**

3. It is seen from the records that when the company under liquidation became a sick industrial unit and matter went before the SICA, it appointed the IDBI Bank as Operating Agency (which was also one of the secured creditors). The subject property was attempted to be sold by IDBI

Bank in terms of the directions issued by the BIFR on 22.01.2004. Advertisement dated 24.05.2004 was issued by the said Bank which fetched them highest bid of 2.84 Crore. This offer was accepted by the IDBI Bank vide letter dated 12.08.2004, however, the bidder failed to deposit the sale consideration within the stipulated time. As a result, the property could not be sold at that time. Meanwhile, the BCI Staff Colony Residential Welfare Association intervened by placing an offer of Rs. 3 Crore to IDBI Bank on 14.08.2004.

3.1 This entailed a series of litigation. The BIFR by its order dated 24.11.2004 rejected the proposal to accept the bid and directed that the subject property shall be taken over and sold by the Official Liquidator of the concerned High Court.

3.2 This order of the BIFR was then challenged by the bidder before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), which set aside the order of BIFR *vide* its order dated 01.04.2005 and directed that the sale be confirmed in favour of the the said bidder. This order of the AAIFR was challenged by the BCI Staff Colony Residential Welfare Association, Rajpura, Punjab and Others, by filling W.P. No.8234/2005 before the Punjab and Haryana High Court.

3.3 The said writ petition was allowed by order dated 04.02.2010 whereby the order of the AAIFR was set aside. This order of the Punjab and Haryana High Court was challenged by the successful bidder by filing Civil Appeal No.10128/2011. The BCI Staff Colony residential Welfare Association also challenged the said order by filing Civil Appeal

No.10127/2011.

3.4 The Hon'ble Apex Court decided the said appeals *vide* order dated 27.04.2023, thereby affirming the order passed by the High Court and consequently, dismissing both appeals, while dismissing the appeals the Hon'ble Apex Court in para 37 observed that the Official Liquidator may take all reasonable steps to fetch the optimum value of the property in order to achieve the objective of a public auction (*Rajiv Kumar Jindal and Others Vs. BCI Staff Colony, Residential Welfare Association and Others, 2023 SCC OnLine 507*)

3.5 This is the background under which the Official Liquidator took possession of the subject property involved in the present case. During the pendency of the aforesaid litigation, the Official Liquidator took possession of the subject property on 14.01.2005 and 15.01.2005.

#### **Facts relevant to auction process relating to present dispute**

4. On 12.06.2023, the Official Liquidator filed OLR No.23 of 2023, seeking permission to carry out the valuation of the subject property i.e. the property owned by the Company situated at Block IV, Staff Colony, Rajpura. In the said OLR, the following prayer was made by the Official Liquidator :

*"(i) Report of the Official Liquidator may kindly be taken on record and may kindly be heard with OLR No.04/2011.*

*(ii) In view of submissions at Para no.12 above, necessary orders may kindly be passed to release payment of Rs.22,000/- as prayed in para (ii) of OLR No.04/2011 in regard to release of professional fees of the Advocate Ms. Rakhi Ray, out of fund available in the account of the company (In-liqn.).*

*(iii) In view of the submissions at para no.16 above, as the amount of Rs.2.84 Crores is deposited with Official Liquidator by IDBI on 24.01.2006, permission may be*

*accorded to official liquidator to refund the amount along with 8% simple interest for the period from 24.01.2006 to release of payment as mentioned in Hon'ble Supreme Court and Hon'ble High Court orders, in above proportion to Sh. Rajeev Kumar, Sanjiv Kumar and Amit Kumar Jindal.*

*(iv) In view of the submissions at Para no.17 above, Official Liquidator may kindly be permitted to carry out valuation of the subject property situated at Rajpura i.e. Block IV, Staff Colony, Rajpura situated on land admeasuring 2,40,759 sq. ft. which houses Staff Colony of around 39,049 sq. ft. (Block IV Land) from the valuer registered with Insolvency and Bankruptcy Board of India (IBBI) which has been specified as the Authority by the Central Government under Section 458 of Companies Act, 2013 on actual Professional Fee but not more than Rs.50,000/- (inclusive of all taxes) to be paid out of the fund available in the account of the Company (In-Liqn.)*

*And*

*Such other order(s) as this Hon'ble Court deem fit and proper may kindly be passed in the circumstances of the case."*

4.1 This Court, after considering the prayer, *vide* order dated 18.07.2023, allowed OLR No.23 of 2023 in terms of reliefs No.1 to 4.

4.2 Accordingly, the valuation of the subject property was carried out and the valuation report was brought on record by the Official Liquidator *vide* OLR No.43 of 2023. According to the valuation report, the fair value of the subject property was Rs.36,31,00,000/-, the estimated realisable value was assessed at Rs.29 crores and the estimated distress sale value was Rs.25 crores.

4.3 The Official Liquidator requested that based on the valuation report, prospective buyers be invited through an e-auction process. However, instead of permitting the e-auction at that stage, the Official Liquidator was directed by this Court to provide a copy of the valuation report to the learned counsel for the Workers' Union, who was permitted to file objections

thereto.

4.4 Subsequently, as no objection was forthcoming, after due consideration, the Court passed an order on 27.09.2024, thereby permitting the e-auction.

4.5 Pursuant to the permission granted by this Court, the Official Liquidator initiated the process of e-auction through M/s RailTel Corporation of India Ltd. (the auction conducting agency) and issued e-Auction Sale Notice in daily newspaper publication dated 20.12.2024 of *The Economic Times* (all India edition), *Dainik Bhaskar* (M.P. edition) and *Punjab Keshri* (Rajpura edition), thereby inviting parties to participate in the e-auction process scheduled to be held on 29.01.2025 (as per clause viii). As per the publication, the reserve price of the property was fixed at Rs.29,00,00,000/-.

4.6 The terms of the e-auction were provided along with the notice in which, as per Clause vi the last date to participate in the bidding process was 22.01.2025. Clause viii of the same notice provides the date for the declaration of the H-1 bidder i.e. the highest bidder as 29.01.2025.

4.7 The OL also issued General Terms and Conditions of e-Auction Sale, according to clause 4 and 5 of the same the last date for registration and submitting bid was 22.01.2025 and the date for conducting bid was provided in clause 6 as 29.01.2025. Apart from this, OL also issued separately, the terms and conditions for sale, which provided in Clause 2 that the EMD amount should be deposited by NEFT/RTGS by the date of 22.01.2025 and in clause 22 reiterated that the last date to participate in the bidding process

was 22.01.2025. Clauses 12 and 14 of the same outlines the provisions regarding payment of the balance consideration and the consequences of default.

4.8 At the scheduled time and date i.e. 29.01.2025, the e-auction process commenced. Upon its conclusion, the present applicant M/s Kalindi Associates was declared the Highest Bidder (H-1 Bidder) on the Public Bidding Portal. Its bid of Rs.31,00,00,000/- was the highest. Accordingly, the bidding process was completed and a confirmatory email was sent to the present applicant on 29.01.2025.

4.9 The company petition was listed before this Court on 12.03.2025, on which date learned counsel for the Official Liquidator prayed for time to convene a meeting for re-auction of the property situated at Rajpura, Punjab. Consequently, the matter was adjourned to 21.04.2025.

4.10 On the very next day after the order dated 12.03.2025, one M/s Maa Sharda Oil deposited an amount of Rs.2,90,00,000/- *via* RTGS into the account of the learned Official Liquidator. Interestingly, there was no offer, intimation or permission granted to the said concern with respect to the auction. M/s Maa Sharda Oil was neither the participant in the bidding process held on 29.01.2025 nor a subsequent bidder who was permitted to participate by any official communication. In fact, it never submitted its bid and directly approached the OL after completion of bidding process.

4.11 After 13 days of depositing the above said amount by Maa Sharda Oil, it for the first time submitted its offer vide letter dated 26.03.2025 to the Official Liquidator for an amount of Rs.35,00,00,000/-. As

a part of this offer apart from earlier deposited amount of Rs.2.90 crores, a security deposit of Rs.2.10 crores was also submitted by M/s Maa Sharda Oil. This offer was considered by the Asset Sale Committee in its meeting held on 09.04.2025, where it was decided that the offer of M/s Maa Sharda Oil should be considered in place of the H-1 bidder.

4.12 It was further decided that a letter be issued to the H-1 bidder, calling upon them to surpass the said offer and in the event the H-1 bidder agrees, inter se bidding shall be conducted. If the H-1 bidder fails to respond or does not agree, the sale shall be confirmed in favour of Maa Sharda Oil. Pursuant to this decision, a letter was issued on 15.04.2025 to the present applicant i.e. Kalindi Associates, calling upon them to raise their bid beyond Rs.35,00,00,000/- and to deposit the difference amount towards the EMD.

4.13 Pursuant to the deposit made by a third party (M/s Maa Sharda Oil), the Official Liquidator, on 17.04.2025, filed OLR No.12/2025, thereby apprising this Court of the offer received from Maa Sharda Oil. It was further informed that this offer was higher than the highest bid in the auction process, as in the auction highest bid was Rs.31,00,00,000/-, whereas M/s Maa Sharda Oil offered Rs.35,00,00,000/-. It was also stated in the OLR that a letter was issued to the H-1 to match the revised bid and that *inter se* bidding would be conducted if the bid was matched.

4.14 This is the brief factual account which is the genesis of the present dispute.

#### **The Contentions of the M/s Kalindi (IA No. 4589/2025)**

5. The intervener (H1 bidder), M/s Kalindi Associates, initially filed



an application i.e. I.A. No.3708 of 2025, stating that upon reviewing the Court proceedings in the present case concerning the property in which it had participated in the e-auction, it was understood that further proceedings related to the payment of the sale consideration were to take place only after the sale was confirmed by this Court. The intervener further states that it was surprised to learn about the order dated 12.03.2025 passed by this Court, wherein the Official Liquidator prayed for time to re-auction the said property without serving any notice to the intervener, who was the successful bidder. Consequently, the intervener filed this intervention application before the Court. The said application was allowed and the applicant was allowed to intervene. Consequently, I.A. No. 4589/2025 was filed for confirmation of sale.

5.1 On consideration of the application, this Court *vide* order dated 21.04.2024, directed the Official Liquidator to maintain the status quo in respect of the property situated at Rajpura, Punjab i.e. the subject property. Thereafter, the Official Liquidator filed OLR No.16/2025, whereby the bids of the petitioner - intervener M/s Kalindi Associates, as well as the bid of a stranger third party M/s Maa Sharda Oil, were placed before the Court for consideration.

5.2 Learned counsel for the petitioner M/s Kalindi Associates submits that in OLR No.16/2025, the Official Liquidator has made misleading statements in Paras 12, 16 and 17 of the report. He submits that para 12 of the OLR dated 26.03.2025 states that M/s Maa Sharda Oil submitted a letter offering a bid of Rs.35,00,00,000/-. Further, para 16 states

that the official liquidator is not seeking a re-auction of the property. It is mentioned that office of Official Liquidator has neither decided nor proceeded with the re-auction of the property. It was also stated that two offers, one for Rs.31,00,00,000/- and another for Rs.35,00,00,000/- were made by two different entities and both bids are being placed before the Court for further directions regarding confirmation of sale, either in favour of M/s Kalindi Associates or Maa Sharda Oil. As such, on one hand OL says that he is not conducting re-auction on the other hand proposing consideration of a bid submitted after conclusion of the auction process.

5.3 Learned counsel submits that the validity of the e-auction conducted on 29.01.2025 was never challenged. There was no objection to the proceedings conducted by the Official Liquidator. He further submits that since a valid e-auction was conducted, in which the highest bid of Rs.31,00,00,000/- was received against the reserve price of Rs.29 crores, the Official Liquidator should have promptly placed this before the Court, however, instead of placing the same before the this Court, when the case was listed on 12.03.2025, the Official Liquidator sought time to conduct a re-auction.

5.4 Immediately, thereafter, on 13.03.2025, a non-participant, M/s Maa Sharda Oil, deposited Rs.2.90 crores without submitting any letter of offer or obtaining the Court's permission. This suggests that there was something more to the arrangement than appears on the surface. On one hand, the Official Liquidator sought time on 12.03.2025 despite the fact that the auction had already concluded on 29.01.2025, due intimation to H1

bidder was sent through mail on the same day and a bid of Rs.31 crore, higher than the reserve price had been placed on record; still adjournment was sought without disclosing this bid. On the other hand, on the very next day of adjournment, an amount was deposited on 13.03.2025 by a complete stranger to the auction proceedings and the Official Liquidator, without hesitation, considered this proposal and placed it alongside the bid of the valid highest bidder before the Court for comparison. Such conduct is completely unsustainable in the eyes of law.

5.5 Learned counsel for M/s Kalindi then refers to the order dated 07.05.2025 passed by this Court, whereby I.A. No.3708 of 2025 was allowed and the present petitioner was permitted to intervene in the matter. The interim order passed earlier, was also directed to continue. On the next date of hearing i.e. 15.05.2025, I.A. No.4589 of 2025, filed by the present petitioner was taken up. The Official Liquidator and other contesting participants were directed to file their reply to the same.

5.6 Learned counsel for the petitioner, M/s Kalindi Associates, in the light of the aforementioned facts, submits that the record clearly shows that a notice was initially issued for auction, which was held on 29.01.2025, Three bidders participated, and M/s Kalindi Associates was declared the highest bidder with an offer of Rs.31 crores, which was above the reserve price of Rs.29 crores. The bid was in accordance with the valuation report and reflected an adequate and optimum price offered by the petitioner. He further submits that the e-auction process was conducted by following the due procedure. Notice was duly issued and there are no allegations of fraud or

collusion. There is also no allegation of deliberate exclusion of any participant from the auction process.

5.7 As such, the auction ought to have been confirmed in favour of the petitioner and the O.L. should have promptly placed the proceeding before this Court. However, despite the auction having concluded on 29.01.2025, the proceedings were not placed before the Court even on 12.03.2025. On that date for the reasons best known to the O.L., time was instead sought for conducting a re-auction. There was no justification for a re-auction without disclosing that an H-1 bidder had already been identified, who had submitted a bid exceeding the reserve price. These facts clearly indicate a possible collusion between the Official Liquidator and stranger third party M/s Maa Sharda Oil. Learned counsel reiterates and emphasises that very fact that on 12.03.2025 the OL sought time regarding the auction and on the very next date, i.e., 13.03.2025, Maa Sharda Oil deposited Rs.2.90 crores in the account of the O.L in itself sufficiently establishes the foul play.

5.8 Approximately 13 days after depositing the said amount, Maa Sharda Oil formally submitted an offer on 26.03.2025. Along with this offer, an additional payment of Rs.2.10 crores, described as a security deposit, was also made. Only after the submission of this offer, the O.L. place on record the bids of both the petitioner, M/s Kalindi Associates and the stranger Maa Sharda Oil through OLR No.16/2025. This clearly shows that the O.L. conveniently waited for the offer from Maa Sharda Oil, thereby deliberately delaying the process for reasons best known to him.

5.9 Learned counsel for the petitioner, M/s Kalindi Associates,

submits that permitting a third party, who had not participated in the auction proceedings, at the whim and caprice of the O.L., not only undermines the integrity of the auction process but also discourages genuine bidders. It introduces uncertainty, which ultimately affects and defeats the very object of maximizing value through competitive bidding.

5.10 Learned counsel further points out that the Workers' Union has placed on record *vide* I.A. No.4078 of 2023 that against the total liability amounting to Rs.17,42,81,615.57/- and an amount of Rs.7 crores is still outstanding, for which an early sale of the property is required.

5.11 In view of the above facts, the O.L. in all fairness should have concluded the sale in favour of the H-1 bidder i.e. the petitioner.

5.12 In support of his submissions, learned counsel placed reliance on the judgements of the Hon'ble Apex Court/ High Court rendered in the following cases:

(i) *Eva Agro Feeds Private Limited vs. Punjab National Bank and Another* in (2023) 10 SCC 189,

(ii) *Flavuro Foods Private Limited vs. Official Liquidator and Another* in 2024 SCC OnLine All 28,

(iii) *Valji Khimji and Company vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others* in (2008) 9 SCC 299, and

(iv) *K. Kumara Gupta vs. Sri Markendaa and Sri Omkareswara Swamy Temple and Others* in (2022) 5 SCC 710.

The Contention of the OL (OLR No. 12/2025 & OLR No. 16/2025)

6. Per contra, learned counsel for the Official Liquidator submits that

there was no delay on the part of the O.L. in concluding sale of the property.

He submits that the Official Liquidator has acted in accordance with the directions issued by this court from time to time. OL has provided the timeline in para 4 of the reply in following manner :

| <i>Date</i>                    | <i>Event</i>   |
|--------------------------------|--|
| 27/09/2024                     | This Hon'ble Court permitted the Official Liquidator to conduct e-auction of the subject property of the company (In-lign.).   |
| 20/12/2024                     | An e-auction sale notice was published in the newspaper and on the official auction portal.  |
| 29/01/2025                     | E-auction of the subject property was conducted and M/s. Kalindi Associates declared as H1 bidder with a bid amount of Rs. 31 crores   |
| 06/02/2025                     | Letter was issued to the members of the Asset Sale Committee to attend a meeting on 24/02/2025 to discuss further course of action in the matter regarding confirmation of sale.   |
| 24/02/2025                     | None of the member of Asset Sale Committee attended the meeting on scheduled date.   |
| 07/03/2025                     | Letter was again issued to the members of Asset Sale Committee as a last opportunity to attend meeting scheduled to be held on 09/04/2025  |
| 10/03/2025<br>to<br>06/04/2025 | Mandatory Residential training period of the Official Liquidator to at NLSIU, Bangalore vide OM issued by the Ministry of Corporate Affairs, New Delhi and the charge was handed over to ROC, Gwalior.   |
| 26/03/2025                     | Meanwhile, a letter is received from M/s Maa Sharda Oils offering a bid amount of Rs. 35 crores for the subject property   |
| 09/04/2025                     | The meeting of the Asset Sale Committee was convened, and both the offers were put, and it was decided to consider the offer received from M/s Maa Sharda Oils being much higher against the offer received from H1 bidder but also fair chance to be given to H1 bidder to revise its bid beyond Rs.35 crores |

|            |  |
|------------|--|
| 15/04/2025 | A letter was issued to Kalindi Associates to confirm its inclination to submit a bid for more than Rs.35 crores  |
| 17/04/2025 | OLR No. 12/2025 as Status report of the Official Liquidator in compliance with order dated 27/09/2024 was filed before the Hon'ble High Court stating the above-mentioned facts in the matter pending consideration. |
| 21/04/2025 | IA No. 3708/2025 was filed by M/s Kalindi Associates i.e. H1 bidder for intervention in COMP No. 12/2004   |
| 02/05/2025 | OLR No.16/2025 filed by the Official Liquidator in respect of subject property praying for further directions to the Official Liquidator for confirmation of sale and same is pending for consideration.             |
| 07/05/2025 | IA No. 3708/2025 is allowed by the Hon'ble High Court  |
| 13/05/2025 | Present Application seeking confirmation of sale and additional directions to execute the sale deed and transfer the asset was filed by M/s Kalindi Associates.  |

6.1 Learned counsel for the O.L. submits that the petitioner M/s Kalindi Associates is attempting to acquire the property of the company at a reduced price, thereby adversely affecting the interests of the creditors. He submits that the matter was brought to the notice of the Court and consequently, *vide* order dated 03.04.2006, this Court constituted an Asset Sale Committee, which was entrusted with the responsibility of taking decisions regarding the sale of assets, not the Official Liquidator.

6.2 He further points out that, in the absence of a meeting of the Asset Sale Committee and confirmation of sale by the Hon'ble Court, the Official Liquidator could not have directed the bidder to deposit the sale consideration. However, the petitioner was asked to confirm whether it could

enhance its offer beyond Rs.35 crores *vide* office letter dated 15.04.2025. This communication was never responded by the petitioner, M/s Kalindi Associates.

6.3 He further points out that a notice was issued on 06.02.2025 to the members of the Asset Sale Committee to take further action in the matter and the meeting was scheduled for 24.02.2025. However, none of the members attended the meeting. As such, meeting was rescheduled on 09.04.2025 by issuing another notice on 07.03.2025. The meeting was duly held on 09.04.2025, during which the Committee considered both proposals i.e. those of M/s Kalindi Associates and M/s Maa Sharda Oil.

6.4 After due deliberations, the members of the Asset Sale Committee were of the opinion that, since the Committee was constituted with the objective of realizing the maximum value of the assets for the benefit of the stakeholders of the company, this objective would be better served if the offer received from Maa Sharada Oil was considered in place of the offer made by the petitioner M/s Kalindi Associates, as the former bid was higher by Rs.4 crores than the H-1 bidder's offer.

6.5 Learned counsel for the O.L. further submits that it was also decided in the meeting that a fair opportunity be given to the petitioner to revise its bid beyond Rs.35 crores, so that the maximum value for the property can be fetched. To that end, a letter was issued to the petitioner on 15.04.2025 and this fact was also brought to the notice of this Court also *vide* OLR No.12/2025, filed on 17.04.2025.

6.6 As such the contention of the applicant regarding deliberate and



unexplained delay in the proceedings, is baseless and deserves to be rejected.

6.7 It has further been stated, by referring to para 12 of the reply that the Official Liquidator neither decided upon nor proceeded with a re-auction of the property. No correspondence was made with the Asset Sale Committee regarding any re-auction. The meeting of the Asset Sale Committee was merely rescheduled because on the originally scheduled date i.e. on 24.02.2025 no member attended the meeting. Accordingly, time was sought by the counsel for the Official Liquidator on 12.03.2025. It was, therefore, not a case of re-auction but merely a rescheduling of the Asset Sale Committee.

6.8 At the relevant time, the Official Liquidator was scheduled to undergo residential training at the National School of Law, Bangalore from 10.03.2025 to 06.04.2025.

6.9 As regards the allegation concerning the communication dated 15.04.2025 by the Official Liquidator to the petitioner M/s Kalindi Associates regarding the enhancement of the bid, it is submitted that the same was done :

(i) in accordance with the decision taken during the Asset Sale Committee meeting held on 09.04.2025, and

(ii) to comply with the direction of the Hon'ble Supreme Court of India to fetch the optimum value of the subject property.

6.10 Therefore, the opportunity was given to the applicant (M/s Kalindi) to enhance its offer of Rs.35 crores. Nowhere in the said letter it was mentioned that the offer would be unilaterally rejected. Since no reply

was received from M/s Kalindi Associates, the Official Liquidator placed both offers before this Court *vide* OLR No.16/2025.

6.11 As such, there was no deliberate suppression of material facts by the Official Liquidator and at no point has the Official Liquidator misled this Court.

6.12 In support of his submissions, learned counsel for the Official Liquidator has placed reliance on the following judgments :

(i) *Navalkha and Sons vs. Sri Ramanya Das and Other* in (1969) *S SCC 537*, and

(ii) *Divya Manufacturing Company (P) Limited Tirupati Woollen Mills Shramik Sangharsha Samity and Another vs. Union Bank of India and Others Official Liquidator and Others* in *AIR 2000 SC 2346*,

(iii) *Lakhani Footcare Pvt. Ltd. Vs. Official Liquidator and Another* in *2020(3) MPLJ 315*.

#### Rejoinder Submissions of M/s Kalindi Associates

7. In rejoinder to the submissions, learned counsel for M/s Kalindi Associates, submits that the reliance placed by the learned counsel for the Official Liquidator on the judgment in the case of *Lakhani Footcare vs. Official Liquidator in 2020 (3) MPLJ 315* is misplaced. In that case, the offer made by the H-1 bidder was below the reserved price, therefore, the question before the Court was pertaining to the adequacy of the offer and not similar issue as involved in the present case.

7.1 He further points out that in the entire reply, the learned counsel for the Official Liquidator has not explained the circumstances or reasons

under which an amount of Rs.2.90 crores was received by the Official Liquidator on 13.03.2025. This aspect remained unexplained.

### **Consideration and findings**

8. Heard learned counsel for the respective parties and perused the record.

#### **A. Regarding Offer by the stranger third party M/s Maa Sharda Oil**

9. The Official Liquidator took possession of the subject property on 14.01.2005 and 15.01.2005. After initial failed attempt of auctioning the property by the IDBI Bank in the year of 2004, the possession was handed over to the OL. After a prolonged litigation before the BIFR, AAIFR, High Court, and lastly the Supreme Court, the matter was finally settled vide order dated 27.04.2023 when the Supreme Court affirmed the order of the High Court setting aside confirmation of sale in favour of Rajiv Kumar Jindal, thus the OL got the responsibility to auction the property in question. As per the Hon'ble Apex Court order in the case of Rajiv (supra) the OL had to take every step to fetch the maximum value of the property.

10. Accordingly, the Official Liquidator on 12.06.2023, filed OLR No.23/2023. After setting out the various facts relating to the aforementioned litigation concerning the subject property, 4 distinct prayers were made. Among them, Prayer No.4 sought permission to obtain a valuation of the subject property from a valuer registered with the Insolvency and Bankruptcy Board of India, as specified by the authority designated by the Central Government under Section 458 of the Companies Act for such purposes.

11. The Court, after considering the said OLR, granted all four prayers, including Prayer No.4, thereby permitting the valuation of the property.

12. Pursuant to the permission granted by this Court, M/s Lalit Kale Associates, Indore, was deputed to carry out the valuation of the subject property. The said agency conducted the valuation and submitted its valuation report in a sealed cover envelop to the Official Liquidator. Consequently, the Official Liquidator filed OLR No.43/2023 thereby placing on record the valuation report in a sealed cover envelope and for permission to open the sealed envelope containing the valuation report and also requested the fixing of the reserve price and the earnest money deposit along with permission to issue a sale notice and take further steps.

13. This Court, after considering OLR No.43/2023 allowed the request of the Official Liquidator and permitted the opening of the sealed envelope containing the valuation report. On perusal of the same, it was recorded in the order dated 04.12.2023 by this Court that according to the valuation report value of the property which can be fetched is stated to be Rs. 36,12,00,000/-. However, instead of permitting the Official Liquidator to proceed with the auction of the property, the Court directed that a copy of the report be provided to the counsel appearing for the Workers' Union, so as to enable them to file objections, if any.

14. OLR No.43/23 was again considered by this Court on 27.09.2024. After taking into account the fact that the workers' union had no objection, the Court permitted the Official Liquidator to proceed with the e-

auction process. This may be noted at this stage that on perusal of the valuation report it is seen that the fair value of the subject property was Rs.36,31,00,000/-, the estimated realisable value was assessed at Rs.29 crores and the estimated distress sale value was Rs.25 crores, thus the reserve price was set at Rs. 29 Crore.

15. Pursuant to the permission granted by this Court, the Official Liquidator published e-Auction Sale Notice in daily newspapers publication *The Economic Times* (all India edition), *Dainik Bhaskar* (M.P. edition) and *Punjab Keshri* (Rajpura edition) in edition dated 20.12.2024 thereby inviting bids from interested parties for the subject property i.e. Plot Nos.45-A, 45-B 47, 48, 51, 52, 54 and 55 situated in Industrial Area, Town No.2, Rajpura. The total plot area ad-measuring 240800 sq. ft.

16. As per the terms appended in the form of a note to the auction sale notice, the last date to participate in the bidding process was 22.01.2025. It was clearly mentioned in Clause 6 that the EMD amount was to be deposited *via* NEFT or RTGS into the e-auction asset account by the Official Liquidator. The last date for submission of the online offer along with the EMD was 22.01.2025 up to 6.00 p.m. Same were the dates provided in the General Terms and Conditions of e-Auction Sale as well as in the terms and conditions of sale.

17. It was further stated in point no. viii of the note that the e-auction shall be conducted through the designated website on 29.01.2025 between 01:00 p.m. to 03:00 p.m. with an auto time extension of 10 minutes for each bid submitted during the last minute before the close of auction, continuing

until the sale is concluded.

18. Pursuant to the e-auction notice, the present applicant M/s Kalindi Associates and three other participants submitted their bids within the time limit of 22.01.2025.

19. The process of e-auction was accordingly conducted on the designated date of 29.01.2025. The present petitioner quoted a bid of Rs.31 crores. In the e-auction, bids were opened at the scheduled time on 29.01.2025, during which the M/s Kalindi emerged as the highest bidder (H-1 bidder). Accordingly, the auction was concluded on the same day and a confirmation email was sent to the petitioner on 29.01.2025 itself.

20. It is thus evident that not only the proper procedure was followed by the Official Liquidator in conducting the e-auction but the bid was also successfully concluded considering that the H-1 bid of Rs.31 crores exceeded the reserve price of Rs.29 crores. However, even after sending confirmatory e-mail to the H1 bidder, the OL did not place on record, before this court, the proceedings of conclusion of e-auction.

21. After about two and half month of the conclusion of the auction, the matter was listed before this Court on 12.03.2025. On that date, the Official Liquidator prayed for time without disclosing anything about completion of e-auction and the fact that the H1 bidder found in the same, the Court granted time. However, as per the request by the OL, it was noted in the order that the counsel for the Official Liquidator had sought time to convene a meeting regarding the re-auction of the property situated at Rajpura, Punjab.

22. No sooner than the case was adjourned on 12.03.2025 on the request of OL, immediately, the stranger third party Maa Sharda Oil (who did not participate in the auction process) deposited a sum of Rs.2,90,00,000/- *via* RTGS into the Official Liquidator's account on 13.03.2025. As such, the contention of the learned counsel for the applicant (H-1 bidder) that the request by the OL was deliberate and he acted as if he knew about the offer of the third party and he appeared to be deliberately praying for adjournment, has some substance.

23. The Official Liquidator attempted to explain this by submitting documents related to the meeting of the Asset Sale Committee and claimed that no decision regarding re-auction had been taken. It was contended that the request for time was made solely because none of the members of the Asset Sale Committee attended the meeting to consider the H1 bid, hence, time was sought on 12.03.2025 to reconvene the meeting. The OL has submitted that Pursuant to this Court's order dated 03.04.2006, whereby the Asset Sale Committee was constituted, the Official Liquidator was duty-bound to place the matter before the said Committee. Accordingly, notices dated 06.02.2025 were issued to the members of the Committee. However, on the scheduled meeting date of 24.02.2025, none of the members were present. As a result, the meeting was rescheduled to 09.04.2025, which is the actual reason for the request made by the OL on 12.03.2025.

24. Despite this explanation, it remains unclear as to under what authority or circumstances the third party Maa Sharada Oil, deposited Rs.2.90 crores into the Official Liquidator's account, especially when no

such permission or direction had been granted/given by this Court. Interestingly, the third party Maa Sharda Oil submitted an offer letter only on 26.03.2025, i.e. after about 13 days of depositing the said amount. This offer was after about three months of the conclusion of the auction on 29.01.2025 offering an amount of Rs.35 crores for the subject property. Along with this bid, the third party deposited a further sum of Rs. 2.10 crores towards Earnest Money Deposit (EMD) and Security Deposit.

25. A bare perusal of the letter dated 26.03.2025 would show that the same does not even disclose the full details of the third party Maa Sharda Oil, not even the name of the person who signed on the document was mentioned, just partner is mentioned. No resolution of partners, not even the reference number of the letter is there. In the letter explanation for not participating in the auction process was given to the effect that “*I am writing to express my keen interest in purchasing the property you have advertised in the newspaper for sale in Rajpura. Unfortunately, I initially overlooked the advertisement, but I am now very interested in acquiring this property*”. First of all this language suggests of an offer by an individual and not by a partnership firm and secondly, the explanation for not participating in the auction proceedings is not that it could not participate for the reason that the same was not publicised properly but it says that the said third party overlooked the same (i.e. the public notice). Thus it accepts its mistake and then directly makes offer without waiting for any permission and even before making this offer by letter dated 26.03.2025 it already deposited an amount of Rs. 2.90 Crore on 13.03.2025. All this is totally unacceptable in a process



of auction which was duly held and concluded.

26. The OL on receiving this offer from stranger third party, promptly placed it before the Asset Sale Committee, however, before doing this no permission was sought from this court for including or considering bid of a third party. The Asset Sale Committee thereafter, considered the matter on 09.04.2025 and in view of the higher bid of Rs.35 crores submitted by the third party Maa Sharda Oil opined that the Committee was constituted with the objective of realising the maximum value of the asset in order to benefit the stakeholders of the Company. Since the offer made by Maa Sharada Oil was higher than the offer received from H-1 bidder in the e-auction, the Committee was of the opinion that the same may be considered. However, in order to give a fair opportunity to the H-1 bidder, it was decided that the H-1 bidder may be permitted to revise its bid beyond Rs.35 crores and it revises then inter-se bid be held so that the maximum value of the property could be obtained. Accordingly, the OL was directed to issue a letter to the H1 bidder to this effect.

27. The OL accordingly issued letter dated 15.04.2025 to the H-1 bidder. In the said letter, it was mentioned that the e-auction was conducted on 29.01.2025 and the H-1 bidder's offer was Rs.31 crores. In was further stated that the Asset Sale Committee had decided to provide the H-1 bidder with an opportunity to enhance its offer to more than Rs.35 crores for the aforesaid property. The bidder was advised to confirm whether it was willing to increase its offer beyond Rs.35 crores within seven days from the date of the letter, failing which, it would be presumed that the bidder was not

interested in enhancing its offer. However, the decision of the Asset Sale Committee that if H1 bidder does or does not revise its bid then what shall follow was not disclosed in the said letter.

28. It is evident that the letter dated 15.04.2025 was cryptic and lacked material disclosures. It did not mention that the letter was issued in light of the fact that the OL had accepted an offer from a third party, one who had not participated in the original bidding process. Moreover, it failed to disclose that the Asset Sale Committee had concluded that, in case the H-1 bidder was unwilling to revise its bid, the Committee may consider confirming the sale in favour of the third party. As such, the letter dated 15.04.2025 was clearly a cryptic communication, concealing more than it revealed.

29. It is only when the applicant became aware of the decision to conduct a re-auction upon stumbling upon the order passed by this Court on 12.03.2025, it filed an application for intervention, i.e., I.A. No.3708 of 2025. This Court, vide order dated 24.01.2025, directed that status quo be maintained. The H-1 bidder was allowed to intervene. Thus it now filed the present application, I.A. No.4598 of 2025 for confirmation of sale in its favour pursuant to the concluded e-auction held on 29.01.2025.

30. Significantly, the emails sent by the Official Liquidator at 3.29 PM, after the conclusion of the e-auction proceedings, informed the present applicant that the auction has been completed. This was followed by another email which stated, "you are the H-1 bidder for the item listed below. Kindly visit the site for more details". In the e-mail, the auction description indicated

that the auction was for Plot Nos.45-A and B, 47, 48, 51, 52, 54 and 55 situated in the Industrial Area of Town No.2, Rajpura, Punjab. The email mentioned the following : "H-1 bid amount : Rs.31,00,00,000/-". It is therefore clear that the present petitioner succeeded in its bid. However, it is not at all clear under what circumstances the Official Liquidator did not proceed with the matter after identifying the H-1 bidder.

31. First a meeting of the Asset Sale Committee was scheduled for 24.02.2025, as indicated by the notice issued on 06.02.2025, then it was later rescheduled to 09.04.2025. Interestingly, even before the meeting of the Asset Sale Committee took place, the Official Liquidator permitted a third party to deposit Rs.2.90 crores into the designated account of the Official Liquidator on 13.03.2025. Furthermore, the Official Liquidator accepted the third party's offer letter on 26.03.2025, which included an additional Rs.2.10 crores and proposed a bid of Rs.35 crores. The Official Liquidator then placed this offer before the Asset Sale Committee.

32. Firstly, the actions of the Official Liquidator were not in accordance with the law. This was not only a clear violation of the integrity and sanctity of the auction process but was also arbitrary and undermines the very essence of holding an auction. Such conduct would discourage genuine and leading businesses from participating in court/litigation originated auction proceedings.

33. Secondly, the consideration of the Asset Sale Committee is also completely unsustainable. In this context, observation of the Hon'ble Supreme Court in its judgment in the case of present Company under

Liquidation itself and for the very same property (i.e., para 36 of the *Rajiv Kumar Jindal and Others vs. BCI Staff Colony, Residential Welfare Association and Others* in 2023 SCC OnLine SC 507) is very relevant. The Hon'ble Apex Court, in para 36 of the said judgment, stated as follows :

*"36. So far as the submission made by the learned counsel for the appellants in Civil Appeal No. 10127 of 2011 that the offer made by the appellants was higher than the sealed bid is concerned, it has no substance for the reason that the appellants have not participated in the bidding process and it is not the case of the appellants that the auction notice published on 24th May, 2004 was not in their knowledge. In our considered view, later offer in the facts and circumstances of the case tendered by the appellants was of no legal significance and rightly not acknowledged by the authority."*

34. It is clear that the Hon'ble Apex Court, in this very case and with respect to the auction of this very property, observed that a third party who was not a participant in the auction process is not permitted to raise an offer after the closure of the bidding process. The OL while placing reliance on paragraph 37 of this very judgment of the Hon'ble Supreme Court has very conveniently overlooked this paragraph which is just above (para 36) in the same judgment.

35. The Hon'ble Supreme Court in the case of *Valji Khimji (Supra)* has held in paragraphs 11 and 12 as under :

*"11. It may be noted that the auction sale was done after adequate publicity in well-known newspapers. Hence, if any one wanted to make a bid in the auction he should have participated in the said auction and made his bid. Moreover even after the auction the sale was confirmed by the High Court only on 30.7.2003, and any objection to the sale could have been filed prior to that date. However, in our opinion, entertaining objections after the sale is confirmed should not ordinarily be allowed, except on very limited grounds like fraud, otherwise no auction sale will ever be complete."*

*12. It is not in dispute that the auction was an open auction after wide publicity in well-known newspapers. Hence, there was nothing to prevent M/s. Manibhadra Sales Corporation and M/s. Castwell Alloys Limited to have participated in the auction, but they did not do so. There is no allegation of fraud either in this case. Hence, in our opinion, there was no justification to set aside the confirmation of the sale."*

36. The Hon'ble Apex Court in the case of *K. Kumara Gupta (Supra)* has held in paras 14 and 17 as under :

*"14. Once the appellant was found to be the highest bidder in a public auction in which 45 persons had participated and thereafter when the sale was confirmed in his favour and even the sale deed was executed, unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or auction-sale was vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of the highest bidder on the basis of some representations made by third parties, who did not even participate in the auction proceedings and did not make any offer.*

*17. The sale pursuant to the public auction can be set aside in an eventuality where it is found on the basis of material on record that the property had been sold away at a throwaway price and/or on a wholly inadequate consideration because of the fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducting/holding the public auction. After the public auction is held and the highest bid is received and the property is sold in a public auction in favour of the highest bidder, such a sale cannot be set aside on the basis of some offer made by third parties subsequently and that too when they did not participate in the auction proceedings and made any offer and/or the offer is made only for the sake of making it and without any serious intent. In the present case, as observed hereinabove, though Shri Jagat Kumar immediately after finalising the auction stated that he is ready and willing to pay a higher price, however, subsequently, he backed out. If the auction-sale pursuant to the public auction is set aside on the basis of such frivolous and irresponsible representations made by such persons then the sanctity of a public auction would be frustrated and the rights of a genuine bidder would be adversely affected."*

37. The Hon'ble Apex Court, in the case of *Eva Agro (Supra)*,

considered the sanctity of the auction process and the limited scope of interference. The Apex Court observed in paras 77 and 79 as follows :

*" 77. K. Kumara Gupta v. Sri Markendaya & Sri Omkareswara Swamy Temple [K. Kumara Gupta v. Sri Markendaya & Sri Omkareswara Swamy Temple, (2022) 5 SCC 710 : (2022) 3 SCC (Civ) 178] , is a case relating to auctioning of land belonging to the Devasthanam. This Court opined that unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or the auction-sale was vitiated by any fraud or collusion it is not open to set aside the auction or sale in favour of the highest bidder on the basis of some representations made by a third party who did not even participate in the auction proceedings and did not make any offer. If there is repeated interference in the auction process, the object and purpose of holding public auction and the sanctity of public auction would be frustrated. This Court in para 23 of the judgment held that unless there are allegations of fraud, collusion, etc. the highest offer received in the public auction should be accepted as a fair value. Otherwise, there shall not be any sanctity of a public auction."*

*79. Thus, mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only lead to incurring of avoidable expenses but also erode credibility of the auction process itself. That apart, post auction it is not open to the Liquidator to act on third-party communication and cancel an auction, unless it is found that fraud or collusion had vitiated the auction. The necessary corollary that follows therefrom is that there can be no absolute or unfettered discretion on the part of the Liquidator to cancel an auction which is otherwise valid. As it is in an administrative framework governed by the rule of law there can be no absolute or unfettered discretion of the Liquidator. Further, upon a thorough analysis of all the provisions concerning the Liquidator it is evident that the Liquidator is vested with a host of duties, functions and powers to oversee the liquidation process in which he is not to act in any adversarial manner while ensuring that the auction process is carried out in accordance with law and to the benefit of all the stakeholders. Merely because the Liquidator has the discretion of carrying out multiple auction it does not necessarily imply that he would abandon or cancel a valid auction fetching a reasonable price and opt for another round of auction process with the expectation of a better price. Tribunal had rightly held that there were no objective*

*materials before the Liquidator to cancel the auction process and to opt for another round of auction."*

38. The reliance as placed by the learned counsel for the OL on the judgment of Navlakha (supra) and Divya Manufacturing (supra), the same is misplaced, in fact the Hon'ble Apex Court in the case of *Vedica Procon (P) Ltd. v. Balleshwar Greens (P) Ltd.*, (2015) 10 SCC 94 has already considered both of these judgments and while explaining Navalkha it held that Divya is not a good law. The Hon'ble Apex Court held in para 47 as under :

*"47. A survey of the abovementioned judgments relied upon by the first respondent does not indicate that this Court has ever laid down a principle that whenever a higher offer is received in respect of the sale of the property of a company in liquidation, the Court would be justified in reopening the concluded proceedings. The earliest judgment relied upon by the first respondent in Navalkha & Sons [Navalkha & Sons v. Ramanya Das, (1969) 3 SCC 537] laid down the legal position very clearly that a subsequent higher offer is no valid ground for refusing confirmation of a sale or offer already made. Unfortunately, in Divya Mfg. Co. [Divya Mfg. Co. (P) Ltd. v. Union Bank of India(2000) 6 SCC 69] this Court departed from the principle laid down in Navalkha & Sons [Navalkha & Sonsv. Ramanya Das, (1969) 3 SCC 537] . We have already explained what exactly is the departure and how such a departure was not justified."*

39. It is evident that mere representation by a third party cannot serve as a basis for reopening concluded auction proceedings. The Hon'ble Apex Court has clearly delineated the scope of interference or reconsideration, holding that an auction should not be interfered with merely because a higher price could be secured, unless the auction is vitiated by fraud or some other substantial defect. It is not justified to cancel the bid of a successful bidder for this reason.

40. Apart from this, it is evident that the Official Liquidator in the present case has acted in a highly unsatisfactory manner. The Official Liquidator has not explained why he permitted a deposit of Rs.2.90 crores by a third party without any permission on 13.03.2025, after the conclusion of the auction proceedings on 29.01.2025, nor why he further allowed the same third party to deposit a additional amount of Rs.2.10 crores along with an offer letter on 26.03.2025. All of this was done by the Official Liquidator without any permission or intimation to this Court. There appears to be no justifiable reason for the Official Liquidator to have acted in this manner and the third party's actions also appear unreasonable, particularly the deposit of Rs.2.90 crores before it could even submit its offer on 26.03.2025.

41. This court has not only to ensure that adequate price is fetched but it has also to ensure that the integrity, sanctity and purity of the process of auction is not breached in any manners. It is not only essential for ensuring fairness of the procedure but also to keep and restore faith of genuine businesses in actively participating in such kind of auction proceedings, which is very much required for achieving ultimate object of holding an auction i.e. not only getting maximum possible value but also to involve genuine bidders so that after auction payments can be realised in actual. In light of these facts, this Court has no hesitation in holding that the offer made by the third party is not only invalid but also smacks of *mala fide* and collusion. As such, it is hereby held that the third party, i.e., M/s Maa Sharda Oil, is not eligible to participate in the auction proceedings. Its offer is therefore disapproved and rejected.



**B. Regarding Bid of the H1 bidder M/s Kalindi Associates**

42. Regarding the offer of the present petitioner, on perusal of the valuation report, it is observed that the certified valuer has assessed the fair value of the subject property at Rs.36,31,00,000/- and the estimated realisable value at Rs.29 crores. The reserved price for the bid was fixed at Rs.29 crores and the present petitioner has offered Rs.31 crores. In the report the Valuer has adopted land rates at Rs. 1500/- SFT. The valuer reported that in the area it is found that the transactions usually not get registered at the actual undergone transactions and therefore, does not reflect correct market value of the property. It is also observed in the report that the area in question is coming with 2 new township projects, however there is delay. It is also seen from the report that call rates available on real estate internet sites also provided rate of 1800/- SFT in the area. As such, after considering the overall facts the rate were fixed at Rs. 1500/- SFT. However, merely for the reason that the sale is being effected through auction sale process, the realisable value is suggested at 29 crore.

43. The Hon'ble Apex Court while considering the role of the Court in an auction of this nature in the case of *Navalkha & Sons v. Ramanya Das*, (1969) 3 SCC 537 has held in para 6 as under:

*"6. The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offerer does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having*

*regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In Gordhan Das Chuni Lal Dakuwala v. Sriman Kanthimathinatha Pillai [1920 SCC OnLine Mad 166 : AIR 1921 Mad 286] it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed is the best that could be expected to be offered. That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in Ratnaswami Pillai v. Sabapathi Pillai [1924 SCC OnLine Mad 466 : AIR 1925 Mad 318] and S. Soundarajan v. Roshan & Co. [1939 SCC OnLine Mad 205 : AIR 1940 Mad 42] In Subbaraya Mudaliar v. Sundarajan [1951 SCC OnLine Mad 169 : AIR 1951 Mad 986] it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well-settled namely that once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. (See the decision of the Madras High Court in Roshan & Co. case). (Emphasis supplied)*

44. The Hon'ble Apex Court reiterated the above proposition of law in the case of *Vedica Procon (P) Ltd. v. Balleshwar Greens (P) Ltd.*, (2015) 10 SCC 94 :

*"39. We cannot help pointing out that Their Lordships came to such a conclusion placing reliance on para 6 of Navalkha case [Navalkha & Sons v. Ramanya Das, (1969) 3 SCC 537] . Their Lordships failed to take note of the last sentence of the paragraph but placed reliance on the penultimate sentence of the paragraph. No doubt, the penultimate statement of the paragraph recognises the discretion of the Company Court either for accepting or refusing the highest bid at the auction,*

*it also emphasises the obligation of the Court to see that the price fixed at the auction is adequate price even though there is no irregularity or fraud in the conduct of the sale. However, the penultimate sentence restricts the scope of such discretion in the following words : (Navalkha case[Navalkha & Sons v. Ramanya Das, (1969) 3 SCC 537] , SCC p. 541, para 6)*

*"6. ... It is well to bear in mind the other principle which is equally well settled, namely, that once the court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. (See the decision of the Madras High Court in Roshan & Co. case [S. Soundararajan v. Roshan & Co., 1939 SCC OnLine Mad 205 : AIR 1940 Mad 42] .)" (emphasis supplied)*

45. The Hon'ble Apex Court in the case of *Valji Khimji (supra)*

held in paras 29 to 31 as under :

*"29. In the present case we are satisfied that there is no fraud in the auction-sale. It may be mentioned that auctions are of two types — (1) where the auction is not subject to subsequent confirmation, and (2) where the auction is subject to subsequent confirmation by some authority after the auction is held.*

*30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.*

*31. In the present case, the auction having been confirmed on 30-7-2003 by the Court it cannot be set aside unless some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by anyone in this case."*

46. Now, in the present case there is no objection by any party against the determination of the fair value of the property. The fair value of

the property would mean a value without any artificial inflation in the value of the property {(1971) 2 SCC 754}. As discussed above in paragraph 41, the fair value of the property is determined by the valuer at Rs. 36,31,00,000/-. The present applicant has placed its bid at Rs. 31,00,00,000/- which in the considered view of this court is not adequate price of the property.

47. As discussed, irrespective of the fact that there is absence of fraud and no procedural lapses in the conduct of the auction, still it is the duty of this court to ascertain that the subject property is being sold at an adequate price. Considering the fact that the valuer while arriving at the fair value of the property has already determined average price of the area and reduced the realisable price only for the reason that the sale is being carried out through auction sale, in the considered view of this court an amount of Rs. 31 crore is not adequate price against fair value of Rs. 36, 31,00,000/-.

48. The court, though, rejected the offer of the third party (Maa Sharda Oil) for the reason of maintaining purity, sanctity and integrity of the auction process but it does not mean automatic confirmation of the sale to the present applicant. The court is still under an obligation to ensure that adequate price is fetched in the sale.

49. In the considered view of this Court, in light of the fair price set by the valuer and notwithstanding the fact that the offer of the third party and the conduct of the Official Liquidator have been rejected by the Court, it appears that Rs.35 crores would be an adequate price, considering the valuation of the property and other factors as mentioned in paragraph 41

herein above.

50. However, looking to the fact that the present applicant (M/s Kalindi) is the H1 bidder, in the opinion of this court, it deserves an opportunity to improve its bid in terms of the findings recorded by this court in above paragraphs.

### **Conclusions and Order**

51. The offer of the third party Maa Sharda Oil (stranger to the auction process) is hereby disapproved and rejected. Consequently prayer no. (ii) of the OLR no. 16/2025 is rejected to that extent.

52. The prayer no. (ii) of OLR No. 16/2025 as it relates to the present applicant (M/s Kalindi), the Official Liquidator is directed to inquire whether the H-1 bidder is willing to revise and improve its offer to Rs.35 crores. If the H-1 bidder is willing to revise its offer to Rs.35 crores, the revised offer shall be received and placed before this Court on the next date of hearing. In the absence of such a revision, the Official Liquidator shall inform the Court about the H-1 bidder's response. The decision regarding the confirmation of the sale will be made after considering the H-1 bidder's response to the revision of the offer. Consequently I.A. No. 4589/2025 is hereby rejected to the extent it relates to the confirmation of sale.

List this case on 13.10.2025.

**(PAVAN KUMAR DWIVEDI)**  
**JUDGE**