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COMA-12-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE ALOK AWASTHI

ON THE 23rd OF APRIL, 2026COMPANY APPEAL No. 12 of 2026*DILIP KUMAR AGRAWAL**Versus**MS BHARAT COMMERCE AND INDUSTRIES LTD*

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Appearance:

Shri Vivek Khedkar, Senior Advocate (through VC) assisted by Shri Karpe Prakhar Mohan - Advocate for appellant.

Shri H.Y. Mehta and Shri Chinmay Mehta - Advocate for the respondent.
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ORDER

Per. Justice Vijay Kumar Shukla

The present intra-Court appeal is filed under Section 483 of Companies Act, 1956 against the order dated 16/3/2026 whereby the I.A no.170/2026 has been rejected.

2. Facts of the case are that the present appeal arises out of liquidation proceedings of Bharat Commerce and Industries Ltd., wherein valuable immovable assets comprising industrial land bearing Plot Nos. 45-A & B, 47, 48, 51, 52, 54& 55 situated at Industrial Area, Town No. 2, Rajpura, Punjab admeasuring approximately 2,40,500 sq. ft. were put to sale under the aegis and supervision of the Official Liquidator attached to this Court, and in



furtherance thereof an e-auction was conducted on 29.01.2025 fixing a reserve price of Rs.29,00,00,000/-, pursuant where to Kalindi Associates emerged as the highest bidder with an offer of Rs.31,00,00,000/-, thereby formally concluding the auction process at the said figure and placing the matter before this Court for confirmation of sale in accordance with law. However, subsequent to the closure of the auction process, a significant and material development took place inasmuch as one M/s Maa Sharda Oils, admittedly not a participant in the auction proceedings, submitted a higher offer of Rs.35,00,00,000/- and also deposited earnest money with the Official Liquidator, thereby demonstrating beyond doubt that the price discovered in the auction was not reflective of the truemarket potential of the asset and that the property was capable of fetching a substantially higher value. In light of the aforesaid development, the Official Liquidator not only took cognizance of the said higher offer but also issued communication to Kalindi Associates calling upon it to enhance its bid to Rs.35 Crores, and further placed the matter before this Court by way of appropriate report seeking directions, thereby clearly indicating that the process had not attained finality and was still open to judicial scrutiny and intervention. The issue relating to acceptance of higher offer and re-auction came to be considered in detail by this Court and was adjudicated vide order dated 27.09.2025, wherein this Court, while disapproving direct acceptance of the third party offer on the ground of maintaining sanctity of auction process, nevertheless did not treat the auction as final or binding, but on the contrary, after taking note of the valuation of the property being approximately Rs.36.31 Crores and the



highest bid being only Rs.31 Crores, categorically recorded the inadequacy of the auction price and proceeded to devise a mechanism to enhance the same. The offer of the appellant is Rs.42,25,00,000/- which is much higher than the final offer. The Company Judge erred while dismissing the application on the ground of finality of a bid.

3. Counsel for the respondent submitted that *Company Appeal No.10/2026 (BCI Staff Colony Residents Welfare Association through its President Mr. Deepak Shrivastava vs. The official Liquidator and Ors.)* was dismissed.

4. Counsel for the appellant argued that the said appeal was not preferred by the present appellant and further in the said case, the Court has not considered the ground which they are canvassing in the present appeal. He relied on the judgment passed by the co-ordinate Bench of this Court in the case of *Lakhani Footcare Private Limited vs. The official liquidator and Ors. in Company Appeal No.6/2020*. He submitted that as per the judgment passed by the Supreme Court in the case of *Divya Manufacturing Company (P) Ltd. and Ors. vs. Union of India and Ors. in Civil Appeal No.4706/1998 and Civil Appeal No.4707/1998* decided on 11/7/2000 in paras 13&16, it has been held that even if the sale certificate has been issued and if there is higher offer by third person, the same may be considered. The said paras are reproduced as under:-

13. From the aforesaid observation, it is abundantly clear that the Court is the custodian of the interests of the Company and its creditors. Hence, it is the duty of the Court to see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. As stated above, in the present



case, the sale proceedings have a chequered history. The appellants started their offer after having an agreement with the Employees Samity for Rs. 37 lakhs. This was on the face of it under bidding for taking undue advantage of Court sale. At the intervention of the learned single Judge, the bid was increased to Rs. 85 lakhs. Subsequently, before the Division Bench, the appellants increased it to Rs. 1,30 crores. At that stage, respondent No. 7, 'Sharma' was not permitted to bid because it had not complied with the requirements of the advertisement. It is to be stated that on 26th June, 1998, the Division Bench has ordered that offers of Eastern Silk Industries Ltd. and Jay Pre-stressed Products Ltd. would only be considered on 2nd July, 1998 and confirmation of sale would be made on the basis of the offers made by the two parties. Further, despite the fact that the appellant 'Divya' had withdrawn its earlier offer, the Court permitted it to take part in making further offer as noted in the order dated 2nd July, 1998. In these set of circumstances, there was no need to confine the bid between three offerers only.

16. Further, there is a specific condition No. 11 in terms and conditions of sale as quoted above which empowers the Court to set aside the sale even though it is confirmed for the interests of creditors, contributories and all concerned and/or public interest. In this view of the matter it cannot be said that the Court became functus officio after the sale was confirmed. As stated above, neither the possession of the property nor the sale deed was executed in favour of the appellants. The offer of Rs. 1.30 crore is totally inadequate in comparison to the offer of Rs. 2 crores and in case where such higher price is offered, it would be in the interest of the Company and its creditors to set aside the sale. This may cause some inconvenience or loss to the highest bidder but that cannot be helped in view of the fact that such sales are conducted in Court precincts and not by a business house well versed with the market forces and price. Confirmation of the sale by a Court at grossly inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of sale, could be set aside on the ground that it was not just and proper exercise of judicial discretion. In such



cases, a meaningful intervention by the Court may prevent, to some extent, underbidding at the time of auction through Court. In the present case, the Court has reviewed its exercise of judicial discretion within a shortest time.

In the result Civil Appeal No. 4706 of 1998 filed by 'Divya' and Civil Appeal No. 4707 of 1998 filed by the 'Samity' stand dismissed. Interim order stands vacated. Pending hearing and disposal of this appeal as the order passed by the Division Bench of the High Court was stayed, fresh directions are required to be obtained from the Court for fixing the time-table for conduct of the auction sale. Hence, the Liquidator is directed to take appropriate steps at the earliest, by obtaining an order from the Court for sale of the property by calling sealed tenders or by auction in accordance with law after giving due publicity in the newspapers, particularly, the newspapers having circulation in Delhi and in the State of Haryana with a reserved price fixed at Rs. 2 crores (as offered). The parties are directed to bear their respective costs.

5. He argued that in para 38, the Company Judge held that the judgment passed in the case of Divya Manufacturing (supra) has been reconsidered in subsequent judgment passed by the Apex Court in the case of *Vedica Procon Private Limited vs. Balleshwar Greens Private Limited and Ors. in Civil Appeal No.6165/2015* therefore, he did not consider the same, treating it to be overruled in Vedica (supra). He argued that the said judgment was considered in Vedica (supra) but not overruled. He further argued that the judgment passed by the Apex Court in both the cases are of equal strength. The said aspect has also not been considered by the Company Judge.

6. Upon perusal of the said impugned order, we find that the aforesaid contentions were not considered by the company judge.



7. The appellant has further submitted that in the Appeal filed by the BCI residents they could not prove their bonafide. However, to prove his bonafide, the appellant is ready to deposit cheque of Rs.5,00,00,000/-.

8. Considering the same, the matter is remanded back to the Single Judge to decide the application afresh after considering the contention raised by counsel for the appellant without being influenced by the earlier order. The matter is directed to be listed before the learned Company Judge in the week commencing 4/5/2026. Till then the official liquidator is directed to not to execute the sale deed. The appellant shall deposit the cheque of Rs.5,00,00,000/- with the official liquidator before the next date fixed by the Company Judge which shall be subject to final outcome of the petition.

9. With the aforesaid, Appeal is **partly allowed and disposed of.**

(VIJAY KUMAR SHUKLA)
JUDGE

(ALOK AWASTHI)
JUDGE

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