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INSOLVENCY & BANKRUPTCY

Properties sold in auction sale prior to the commencement of moratorium cannot be treated as liquidation assets of the Corporate Debtor: Supreme Court

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PUBLISHED 30 December 2023

The Hon'ble Supreme Court ("SC") comprising of Hon'ble Justice Aniruddha Bose and Hon'ble Justice Vikram Nath in the matter of *Haldiram Incorporation Pvt. Ltd. v. Amrit Hatcheries Pvt. Ltd.*[i] asserted that the properties auctioned for sale prior to the commencement of the CIRP process under the Insolvency and Bankruptcy Code 2016 ('IBC") cannot be categorized as liquidation assets of corporate debtor for the purposes of taking any further steps in the liquidation proceedings.

Facts in brief

The Respondent herein borrowed funds and mortgaged two parcels of land from the Financial Creditor. Upon default on repayment of the dues by the Respondent, the bank auctioned the two land sets in Howrah District, West Bengal, as per the provisions of SARFESI Act, 2002. The Appellant emerged as the successful auction bidder and a sale certificate was issued on 19.08.2019. Subsequently, on 20.08.2019, a Company Petition filed by an operational creditor against the Respondent was admitted vide Order dated 20.08.2019, following which an interim moratorium was initiated. An erstwhile director of the respondent filed a notice of motion contesting the sale of the mentioned properties.

The Hon'ble NCLT vide Order dated 25.02.2020 deemed the sale and handing over of the property to be illegal and directed the Liquidator to take possession of the property. This decision was further affirmed and upheld by the Hon'ble NCLAT.

The Appellant has challenged the impugned NCLAT order by way of this present appeal before the Hon'ble Supreme Court.

Findings of the Supreme Court

The erstwhile Director and the Liquidator had filed counter affidavits contesting the auction sale, however at the time of the hearing, the counsel representing the parties affirmed the legitimacy of the sale of the subject property by way of auction, and moreover it was agreed by both the parties that the sale was completed before the declaration of moratorium. This change significantly impacted the appeal by eliminating any viable challenge.

The division bench relied on the case of *Esjaypee Impex Private Limited v. Assistant General Manager and Authorised Officer, Canara Bank*,[ii] wherein it was held that Section 17(2) (xii) r.w. Section 89(4) of the Registration Act, 1908 requires the bank's authorized officer under the SARFESI Act to hand over the duly validated sale certificate to the auction purchaser. It further provides that a copy is to be forwarded to the registering authorities for filing in Book I in accordance with Section 89 of the Registration Act. This stance was affirmed by the Hon'ble Supreme Court in the matter of *"Inspector General of Registration and Another v. G. Madhurambal and Another".*[iii]

The Court observed that no reason was put forth to prove that the sale certificate should be held illegal, and the Respondents failed to establish any default in the issuance of sale certificate as per Section 89(4) of the Registration Act, 1908. Moreover, all the three Respondents, at the time of hearing, agreed to the fact that the sale stood concluded.

Based on the above analysis, the Hon'ble Supreme Court allowed the appeal and concluded that the properties could not be treated as liquidation assets of the Corporate Debtor.

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[i] Civil Appeal No. 1733 of 2022

[ii] [(2021) 11 SCC 537]

[iii] SLP(C)No. 16949 of 2022