

Asteroid Shelter Homes Pvt. Ltd. v. Assets Reconstruction Company (India) Ltd. & Ors.

Asteroid Shelter Homes Pvt. Ltd.

...Appellant

Assets Reconstruction Company (India) Ltd. & Ors.

...Respondent

Case No: Appeal No. 50/2023

Date of Judgement: 13/09/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Umesh Shetty Senior Counsel, along with Mr Prerak Choudhary, Ms Anisha Balse and Ms Fatima Lakdawala, i/b Mr Prerak Choudhary, Advocate.

For Respondent: Mr Tushad Cooper Senior Counsel along with Mr Bhalchandra Palav and Mr A Dighe, M/s Bhal & Co., Ms Barsha Parulekar, Advocate.

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Facts

Asteroid Shelter Homes Pvt. Ltd. (Appellant) is the prospective purchaser of a secured asset in Original Application (O.A.) No. 162 of 2002, the Recovery Certificate of which is being executed in Transferred Recovery Proceeding No. 2 of 2012. The O.A. was initially filed by ICICI Bank Ltd. against Daewoo Motors Ltd. for the recovery of ₹511 crores by enforcing the mortgaged securities consisting of land bearing plot A-1 and measuring 204 acres in the Surajpur Industrial Area, Noida-Dadri Road, Greater Noida, Uttar Pradesh (the

subject property). ICICI Bank Ltd. assigned the debt to Assets Reconstruction Company (India) Ltd. (ARCIL) (Respondent 1), which continued with the execution of the Recovery Certificate. ARCIL was appointed as the DRT Receiver and attempted to sell the subject property in public auctions, which failed repeatedly for want of bidders. ARCIL obtained permission to conduct a private sale of the property under court supervision, announcing the sale in two lots.

Arguments by the Appellant

The Chief Operating Officer of ARCIL visited the Appellant's CMD and requested them to purchase the subject property. It was mutually decided that the property would be sold to the Appellant for ₹350 crores through a private treaty. The Appellant entered into an MOU with the Uttar Pradesh Government, undertaking to invest ₹4000 crores in the property for developing an International Industrial and Logistic Park. The Appellant conducted due diligence, surveys, and evaluations of the property, incurring substantial resources. The Appellant deposited ₹5 crores with ARCIL and handed over a cheque for ₹45 crores. On 20/02/2023, ARCIL made submissions before the Recovery Officer for an extension of time to conduct the sale, and the Recovery Officer asked the prospective purchaser (Appellant) to deposit 10% of the reserve price to prove their bona fides. The Appellant attended the Recovery Officer's court on 08/03/2023 to deposit 10% of the reserve price, but the Recovery Officer did not permit the Appellant to appear and tender the amount. The Recovery Officer issued orders to proclaim the sale with a reserve price of ₹310 crores, ignoring the Appellant's willingness to purchase the property for ₹350 crores through a private sale. The Appellant filed an intervention application before the Recovery Officer, which was refused to be taken on file. ARCIL and the Official Liquidator consented to sell the property to the Appellant under court supervision, but the Recovery Officer ignored their submissions and discharged ARCIL as the Court Receiver, appointing Ms. Rupa Patel instead.

Arguments by ARCIL (Respondent 1)

ARCIL filed Appeal No. 07 of 2023 before the DRT, challenging the Recovery Officer's orders. The DRT stayed the proceedings before the Recovery Officer and opined that a sale by private treaty under court supervision was permissible. ARCIL and the Appellant continued discussions, and the Appellant undertook to pay the entire price of ₹350 crores within 90 days, with an initial payment of ₹70 crores. ARCIL, the Appellant, and Stressed Assets Stabilisation Fund (Respondent 2) held a joint lenders meeting (JLM) on 06/04/2023, approving the Appellant's proposal subject to the DRT's order. ARCIL took a U-turn in view of IHDP Global's enhanced bid and wanted to go for a fresh auction, ignoring the JLM's terms.

Arguments by IHDP Global (Intervener)

IHDP Global's bid of ₹310 crores was accepted by the Recovery Officer. IHDP Global sought a refund of ₹31 crores deposited as EMD for their bid of ₹310 crores, which was allowed by the DRT. IHDP Global filed an intervention petition (I.A. No. 1095 of 2023) before the DRT. IHDP Global filed I.A. No. 548 of 2023 for intervening in the present appeal.

Court's Elaborate Opinions

The DRT, in its order dated 20/04/2023, recorded the presence of IHDP Global's counsel as a prospective bidder, recorded the facts regarding the proposals made by the parties in the JLM minutes, and noted the Appellant's objection to receiving IHDP Global's bid. The DRT observed that the Recovery Officer had not strictly adhered to the notification regulating the e-auction and set aside the sale proclamation dated 08/03/2023. The DRT restored ARCIL's receivership and discharged Ms. Rupa Patel, directing the Recovery Officer to comply with the directions and pass a "balancing order" after hearing the parties. The DRT found that the Recovery Officer misconstrued the order dated 20/04/2023 and the concept of a private sale under court supervision by considering IHDP Global and other entities eager to participate in the auction. The DRT held that the minutes of the JLM and the

Appellant's revised offer were accepted by ARCIL and the other lender, subject to the DRT's approval, which was not specifically granted. The DRT stated that a proposal becomes a concluded contract only when it is accepted unconditionally, and the wordings in the minutes indicating that the terms were subject to the DRT's approval suggested that something more needed to be done. The DRT found no reason to interfere with the orders directing an auction of the property and permitting bidders to participate, as the Appellant was given an opportunity to participate but did not deposit the EMD or participate in the auction. The DRT dismissed the appeal, holding that the Appellant cannot tie down the lenders to the JLM and insist on the sale taking place for the amount offered by them in installments, especially when a higher amount was received through the auction.