

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**Appeal No. 50/2023**

Asteroid Shelter Homes Pvt. Ltd. ... Appellant/s  
V/s.

Assets Reconstruction Company (India) Ltd. &  
Ors. ... Respondent/s

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

Mr Tushad Cooper Senior Counsel along with Mr Bhalchandra Palav  
and Mr A Dighe, M/s Bhal & Co., Advocate for Respondents Nos. 1  
& 2.

Ms Barsha Parulekar, Advocate for Respondent No.3 Official  
Liquidator

Mr Rajesh Nagory, i/b Ms Sanjana Ghogare, Advocate for Intervener.

**:- Order dated: 13/09/2023:-**

This is an appeal filed by the Appellant in Appeal No. 07 of 2023 on the files of the Debts Recovery Tribunal-II, Mumbai (D.R.T.) impugning the order dated 28/06/2023 in Misc. Application No. 20 of 2023 wherein the Ld. Presiding Officer failed to offer a clarification to his earlier order dated 20/04/2003.

2. The Appellant is a company and the prospective purchaser of the secured asset in the Original Application (O.A.) No. 162 of 2002, the Recovery Certificate of which is being executed in Transferred Recovery Proceeding No. 2 of 2012.

3. The O.A. was initially filed by ICICI Bank Ltd. against Daewoo

Motors Ltd. for 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, Gautam Budh Nagar, Uttar Pradesh (the subject property). The O.A. was allowed on 31/08/2004 and a Recovery Certificate was issued on 11/10/2004. Later, ICICI Bank Ltd. assigned the debt to ARCIL, which continued with the execution of the Recovery Certificate. The ARCIL was appointed as D.R.T. Receiver and attempted to sell the subject property in a public auction. The attempts made to sell the subject property failed repeatedly for want of bidders. The ARCIL applied to sell the secured assets under modified terms of sale by private treaty. On 10/11/2006 the Ld. Recovery Officer allowed the application filed by ARCIL to conduct a private sale under court supervision. The D.R.T. Receiver announced the sale in two lots. The first lot consists of fixed assets and the second lot of current assets. The Ld. Recovery Officer accepted the highest offer of PAN India Motors received for Lot No. 1, while the offer received for Lot No.2 by Cross-links was rejected. Ten attempts to sell the property failed.

4. When multiple attempts to auction the property failed, the Chief Operating Officer of ARCIL visited the CMD of the Appellant company with a request to purchase the subject property. It was mutually decided the property would be sold to the Appellant for ₹350 crores by way of a private treaty. Six month's time was fixed for payment of the amount. The Appellant entered into an MOU with the Uttar Pradesh Government undertaking to invest a sum of ₹4000 crores in the property for developing an International Industrial and

Logistic Park in the UP Investors Summit. The Appellant was involved in various discussions in this regard with foreign investors, foreign funds, national banks and other financial institutions. The Appellant had also conducted a survey of the subject property and had done some evaluation with the aid of architects, engineers and surveyors. Considerable resources are spent by the Appellant to conduct due diligence, survey and analysis of the property.

5. Pursuant to the discussions that the Appellant had with ARCIL, the Appellant also deposited a demand draft for ₹5 crores and a cheque for a sum of ₹45 crores was also handed over to the officer of ARCIL. On 20/02/2023, ARCIL made submissions before the Ld. Recovery Officer for extension of time to conduct the sale of the property. The Ld. Recovery Officer made an order on that day, asking ARCIL to direct the prospective purchaser of the property to deposit 10% of the reserve price to prove their bona fide. Pursuant to the said order, the Appellant had attended the Court of the Ld. Recovery Officer on 08/03/2023, and also made arrangements to produce a demand draft for ₹5 crores and a cheque for ₹30 crores. However, on that date, the Ld. Recovery Officer did not permit the Appellant to appear and tender 10% of the reserve price. Orders were passed to proclaim the sale with a reserve price of ₹310 crores, despite being informed that the Appellant was willing to purchase the property in a private sale for ₹350 crores. Though the Appellant filed an intervention application before the Recovery Officer, it was refused to be taken on file. Affidavit and letter were filed by ARCIL and the official liquidator consenting to sell the property to the Appellant

under the supervision of the Court. Ignoring the submissions made by the parties, the Ld. Recovery Officer proceeded to pass orders on 13/03/2023 and on 15/03/2023 to proceed with the sale fixing the reserve price at ₹310 crores. That apart, the Ld. Recovery Officer also opined that there was collusion between the Appellant and ARCIL and consequently, discharged ARCIL from the position of the Court receiver and appointed Ms Rupa Patel, whose name was not even in the D.R.T. panel of Court Receivers.

6. Aggrieved by the orders passed by the Ld. Recovery Officer, ARCIL filed Appeal No. 07 of 2023 before the Ld. Presiding Officer, D.R.T., and after hearing both sides, the Ld. Presiding Officer was pleased to stay the proceedings before the Recovery Officer vide order dated 05/04/2023. The Ld. Presiding Officer also opined that the sale by private treaty under the supervision of the Court was permissible. It was also directed orally that the joint meeting of the lenders may be convened and a resolution passed agreeing for the private sale and the minutes be produced before the D.R.T.

7. In the meanwhile, the bid submitted by the intervener IHDP Global for ₹310 crores was accepted by the Ld. Recovery Officer. Since the Recovery Proceedings were stayed, pursuant to the oral direction given by the Ld. Presiding Officer on 05/04/2023, discussion between ARCIL and the Appellant continued and the Appellant undertook to pay the entire price of ₹350 crores to ARCIL within 90 days. The initial payment of ₹35 crores was also increased to ₹70 crores. On 06/04/2023, the Appellant and the creditors namely, ARCIL and Stressed Assets Stabilisation Fund (the second

Respondent) held a joint lenders meeting (JLM). On approval of the proposal, the top management of the lenders agreed on the price offered by the Appellant subject to the order passed by the D.R.T. by consent of the parties. The copy of the minutes of JLM was produced before the D.R.T. The matter came up for consideration before the D.R.T. on 10/04/2023 and by consent of the parties the stay of the Recovery Proceedings was extended and the matter was posted for hearing on 20/04/2023. IHDP Global appeared before the D.R.T. through its Counsel. The Ld. Presiding Officer passed an order on 20/04/2023 recording the presence of the Ld. Counsel for IHDP Global sought to intervene in the matter as a prospective bidder and an order was passed. The facts regarding the proposals made by the parties in the recorded minutes of JLM were recorded. The objection raised by the Appellant with regard to receiving the bid submitted by IHDP before the Ld. Recovery Officer was also recorded. It was also observed that the Recovery Officer has not strictly adhered to the notification regulating the e-auction. Consequently, the sale proclamation dated 08/03/2023 was set aside. The receivership of ARCIL was restored and Ms Rupa Patel, who was appointed as receiver by the Ld. Recovery Officer was discharged. Ultimately Appeal No. 7 of 2023 was disposed of with the following order:

“10. The Ld. Recovery Officer is directed to comply with the above directions. In the facts and circumstances of the case, the Ld. Recovery Officer shall pass balancing order after hearing of the parties.”

8. The Appellant would contend that as per the directions in the order dated 20/04/2023 disposing of Appeal No. 07 of 2023, the Ld. Recovery Officer was to hear the parties to the appeal and pass a

“balancing order”. The Appellant would contend that by this order of the Ld. Presiding Officer, none other than the parties to the Appeal No. 07 of 2023 were to be heard. However, the Ld. Recovery Officer misconstrued the order and also the concept of the private sale under court supervision, and on 24/04/2023 the Ld. Recovery Officer heard the Ld. Counsel appearing for IHDP Global and other entities who were eager to participate in the auction, and thereafter, expressed his intentions to go ahead with public auction without considering the private treaty. When the matter was taken up for hearing before Ld. Recovery Officer on 28/04/2023 it was brought to the notice of the Ld. Recovery Officer by the Ld. Counsel appearing for the Appellant that the order of the Ld. Presiding Officer dated 20/04/2023 was being misconstrued and sought time to seek clarification from the Ld. Presiding Officer.

9. However, without granting any opportunity to get clarification, the Ld. Recovery Officer posted the matter for orders on 03/05/2023. ARCIL filed an affidavit stating that in view of the subsequent offer by IHDP Global for a price of ₹355 crores, it was suggested to have inter-se bidding between the Appellant and IHDP Global and in case IHDP Global is not inclined to participate in the inter-se bidding then the offer of the Appellant as recommended by the JLM may be considered and confirmed.

10. Notwithstanding the submission made by the Appellant, the Ld. Recovery Officer posted the proceeding for orders on 03/05/2023. Apprehending that the Ld. Recovery Officer may proceed with the public auction, the Appellant filed an M.A. No. 20 of 2023 before the

Ld. Presiding Officer. The Appellant apprehended that the orders on the Recovery Proceedings would be passed on 03/05/2023. However, to the surprise of the Appellant, the Ld. Recovery Officer uploaded the impugned order on 28/04/2023 itself. In that order, the Ld. Recovery Officer fixed the reserve prices at ₹355 crores considering the offer made by IHDP Global and fixed the e-auction to be held on 09/06/2023.

11. When M.A. No. 20/2023 came up for hearing before the Ld. P.O. on 01/05/2023, the Ld. Presiding Officer passed an order to the effect that the Ld. Recovery Officer and the bidders seem to have misunderstood the concept of the private sale under court supervision and directed the Ld. Recovery Officer not to proceed in the Recovery Proceedings till 04/05/2023 and the M.A. was posted for hearing on 04/05/2023.

12. In view of the order of the Ld. Recovery Officer putting up the property for e-auction on 09/06/2023 with the reserve price of ₹355 crores, the Appellant filed Appeal No. 13 of 2023 impugning that order before the Ld. Presiding Officer. Appeal No. 13/2023 and M.A. No. 20/2023 were taken up together before D.R.T. The impugned order of the Ld. Presiding Officer was passed on 28/06/2023 dismissing both the M.A. and the Appeal.

13. It is pointed out that IHDP Global had retreated from the suggestion of inter-se bidding and instead filed an intervention petition before the D.R.T. as I.A. No. 1095 of 2023. On 10/05/2023, the Ld. Presiding Officer posted the matter for a re-hearing. IHDP Global

sought a refund of ₹31 crores deposited by it as EMD for their bid of ₹310 crores. The said prayer was allowed and the money was refunded.

14. The ARCIL took a U-turn in view of the enhanced bid proposed to be submitted by IHDP Global and wanted to go for a fresh auction of the property, ignoring the terms of the minutes of the JLM.

15. The impugned order passed by the Ld. Presiding Officer on 28/06/2023 clearly records that the Ld. Recovery Officer has flouted the orders passed by the Ld. Presiding Officer on 20/04/2023. Despite such finding, neither was there an order to clarify the previous order dated 20/04/2023, as required in M.A. No. 20/2023, nor was the order dated 28/04/2023 passed by Ld. Recovery Officer set aside. Having observed that it was a fit case for action against Recovery Officer, for flouting the order dated 20/04/2023, the fresh auction sale was directed to be proceeded with. As a consequence of that, the Ld. Recovery Officer passed an order on 03/07/2023 issuing a fresh sale proclamation dated 06/07/2023.

16. It is, therefore, prayed in the appeal that the Ld. Presiding Officer erred in not setting aside the order of the Recovery Officer dated 28/04/2023 which clearly flouts the order of the Ld. Presiding Officer dated 20/04/2023. The D.R.T. also erred in holding that the Appellant was estopped from proceeding with the private sale after having conceded to inter-se bidding with IHDP Global. It is submitted that during the argument it was only a suggestion that the Appellant is willing to beat the price offered by IHDP Global and that would not in any way estop them from relying on the JLM which agrees to sell



the property to them for a sale consideration of ₹350 crores. Hence this appeal.

17. The Appellant therefore seeks to quash and set aside the order of the Ld. Presiding Officer dated 28.06.2023 refusing to set aside the order of the Ld. Recovery Officer dated 28.04.2023 and the consequent order of the Ld. Recovery Officer dated 03/07/2023 to proceed with the sale which has now been scheduled on 17/08/2023. By way of an interim order, the Appellant sought to keep the sale scheduled to take place on 17/08/2023 at abeyance.

18. IHDP Global, the other prospective bidder, filed I.A. No. 548 of 2023 for intervening in this appeal. The Ld. Sr. Counsel Mr Umesh Shetty appearing for the Appellant and the Ld. Sr. Counsel Mr Tushad Cooper appearing for the creditor ARCIL, Ms Barsha Parulekar, the Ld. Counsel for the Official Liquidator and Mr Rajesh Nagori appearing for the intervener were heard. Records perused.

19. The thrust of the argument advanced by Mr Umesh Shetty, was that there was already a concluded contract between ARCIL and the Official Liquidator on one side and the Appellant on the other side with regard to the sale of the property for sale consideration of ₹350 crores. The Ld. Presiding Officer also had approved the contract entered into between the parties to the JLM. It is submitted that since the Ld. Presiding Officer could not confirm the sale, it was left to the Ld. Recovery Officer to pass a “balancing order”.

20. A reading of the order dated 20/04/2023 extracts the draft minutes produced by the parties. It is recorded that the Appellant

(ARCIL) and the Respondents consented to the orders and declarations recorded therein. The receiver appointed by the Recovery Officer was discharged forthwith and the receivership of ARCIL was restored. The Appellant's revised offer to pay the sale consideration of ₹350 crores within 90 days instead of 180 days as proposed earlier was accepted by the ARCIL and the other lender. Thereafter, the Ld. Recovery Officer was directed to comply with the directions and pass a balancing order after hearing the parties.

21. Apart from recording the minutes of the JLM, and the submissions made by the Ld. Counsel appearing for the parties, I cannot find any specific direction given to the Recovery Officer with regard to how the "balancing order" has to be passed. The recording of the submissions made by the Counsel and extracting the terms in the JLM cannot be stated as acceptance of the term by the Ld. Presiding Officer. Any order made by a judicial authority cannot munch words and leave it to the imagination of the parties interpreting the order. Orders are to be specific, and precise and directions should be pointed. A reading of the JLM would only suggest the terms which have been agreed to by the parties subject to the approval of the same by the Presiding Officer. There is no specific approval noted in the order of the Ld. Presiding Officer. A proposal would become a concluded contract only when it is accepted unconditionally. The very wordings in the minutes that the terms are subject to approval by the D.R.T. indicate that something more needs to be done. The letter dated 18/04/2023 from ARCIL to the director of the Appellant company is pertinent. After drawing the terms of the settlement, the last paragraph

reads thus:

“Please note that the above recommendation for sale in your favour shall not be binding upon ARCIL and SASF till the passing of an order by the Hon’ble Presiding Officer in terms of proposed consent minutes to allow sale in your favour. Further, before passing of such an order, ARCIL and SASF reserve their respective rights to revoke their above recommendation for sale in your favour without assigning any reason/s, which please note.”

22. This would indicate that the proposal for sale was not informed and concluded. The Ld. Presiding Officer has not concluded in his order that the terms of the sale by private treaty were acceptable. Had it been so, he would not have asked the Ld. Recovery Officer to hear the parties and pass a “balanced order”.

23. It cannot therefore be held that the minutes of the joint lenders and the Appellant were a concluded contract. It only suggested the manner in which the D.R.T. is to pass the orders. No such specific orders have been passed by the D.R.T. I therefore find no reason to interfere with the orders passed by the Ld. PO directing auction of the property permitting bidders to take part in it.

24. The Appellant was given an opportunity to participate in the auction. Nevertheless, the Appellant did not participate. There was sufficient time available to the Appellant to deposit the EMD. This Tribunal had refused to grant any interim orders to stall the auction. The Appellant had also approached the Hon’ble High Court of Bombay with the prayer to defer the auction but no reliefs were granted, and it was observed that the Appellant had time till 4:30 PM to submit the bid for the auction. Hence, had the Appellant been honest about bidding for the property, the bona fides could have been proved by depositing the amount and participating in the auction

which, it was made clear by this Tribunal would depend on the ultimate result of this appeal. A huge amount of recovery of public monies is involved in this case and therefore, the Appellant cannot tie down the lenders to the JLM and insist on the sale to take place for the money offered by them and that too, the instalments. It is submitted by the Ld. Counsel appearing for the parties that the sale had already taken place and the property was sold for a price much higher than the amount offered by the Appellant. The Ld. Counsel appearing for the Appellant had even made a last-moment attempt by making a submission that the Appellant should be given an opportunity to match the price offered by the highest bidder in the auction. It is to avoid this that the Appellant was given an opportunity to bid in the auction. The Appellant however did not seize that opportunity of bidding for the property and cannot now seek to match up the price offered by the highest bidder which could easily have been done in the bid had the Appellant participated in it. The Appellant cannot therefore complain of not getting an opportunity to bid for the property.

This Tribunal is of the opinion that there are no merits in the appeal and hence the appeal is dismissed.

Sd/-  
Chairperson

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