Reportable/Non-Reportable

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 27 of 2026
(Arising out of Appeal No. 01 of 2025 in DRT -I, Kolkata)

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

1. Lloyds Realty Developers Limited, A2, 2nd Floor, Madhu Estate, Pandurang Budhkar Marg, Lower Parel, Mumbai 400013.

....Appellant

-Versus-

1. Rare Asset Reconstruction Limited, Gala Argos, Beside Hari Krupa Tower, Gujarat College Road, Ellisbridge, Ahmedabad – 380006.

2. Genelec Limited (in liquidation) 5th Floor, Bank of Indian Building, Mahatma Gandhi Road, fort, Mumbai -400023 been represented by Official Liquidator.

3. Malayvrunda Creative Home Makers Private Limited, C-2/703, Satellite Classi, Caves Road, Jogeswari East, Mumbai – 400060.

4. Invent Asset Securitization and Reconstruction Pvt. Ltd. 107, Jolly Maker Chambers No. 2 225, Nariman Point, Mumbai-400021.

5. United Spirits Limited having its office at 19/1 and 19/2, 18th Floor, Merlin Acropolis, 1858/1, Rajdanga Main Road, Kolkata - 700107.

... Respondents

Counsel for Appellant	Mr. Nimish Mishra, Mr. D. Basu Roy, Learned Counsel
Counsel for Respondents	Mr. Krishna Raj Thakker, Learned Senior Advocate, Mr. Arindam Chandra, Learned Counsel for R-3 Mr. Malay Kumar Ghosh, Learned Senior Advocate, Mr. Basudeb Mukherjee, Learned Counsel for R-4.

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JUDGMENT : 18th August, 2026

THE APPELLATE TRIBUNAL :

Instant Appeal has been preferred against a judgment and order dated 20th May, 2025 passed by Learned DRT-1 Kolkata dismissing the Appeal No. 01 of 2025 ***(Lloyds Realty Developers Limited versus Rare Asset Reconstruction Limited, and others)*** filed against the orders dated 28.02.2025, 04.03.2025, 05.03.2025, 06.03.2025 and 20.03.2025 passed by Recovery Officer of DRT-I Kolkata in RP. No. 01 of 2022 arising out of O.A. No. 136 of 2001.

2. As per pleadings of the parties, Appellant namely Lloyds Realty Developers Limited is neither a borrower nor a guarantor. A Sale Notice was published by the Recovery Officer, DRT-1 Kolkata on 17.01.2025 in R.C. Proceedings No. 01 of 2022 for sale of the schedule properties at a reserve price of Rs.54,33,05,000/- by way of e-auction to be held on 05.03.2025. Appellant herein claims himself to be an interested bidder who deposited the necessary fees to participate in the bidding process and also downloaded the sale proclamation. He was bona fide and valid intending purchaser. An earnest money of 10% akin to Rs.5,43,30,500/- was deposited through Bank draft. Appellant also provided the downloaded requisite documents along with other necessary documents and the details of the Directors of the Company along with KYC on 27.02.2025. It

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is alleged that the Authorised officer of the Appellant visited the Recovery Officer for guidance but could not contact him. On 28.02.2025, Appellant was kept waiting and on persuasion and on request the Recovery Officer received the documents at 1.20 p.m. However, Appellant bid was declined for consideration of the Recovery Officer.

3. On 05.03.2025 i.e. the date of auction, Appellant along with his Counsel appeared before the Recovery Officer along with the documents. But the Recovery Officer refused to accept the documents and did not allow the Appellants to participate in the e-auction. An e-mail message to this effect was sent at about 1.17 p.m. to the Recovery Officer. In the e-auction the Respondent No. 3 namely Malayvrudnda Creative Home Makers Private Limited was declared as the successful bidder and the bid amount of Rs. 58,13,36,350/- was accepted. 25% and 75% of the bid amount were directed to be deposited in accordance with Rules. A letter was sent by the Appellant to the Recovery Officer on 04.03.2025 for reviewing and amending the order dated 28.02.2025. The Recovery Officer confirmed the sale on 05.03.2025 with a direction to the unsuccessful bidder to collect the demand draft. The Rare Asset Construction Limited sent a letter to the Recovery Officer on 05.03.2025 either to defer the sale or to issue a fresh Sale Notice. The Recovery Officer on 20.03.2025 recorded that the highest bidder has deposited the total amount of e-auction bid along with poundage fee.

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4. I.A. No. 100 of 2025 was filed by the Appellant on 04.04.2025 before the Recovery Officer communicating that the orders passed by the Recovery officer are challenged before the Debt Recovery Tribunal wherein an order was passed by the Recovery Officer appointing the Special Officer to execute the Deed of Conveyance in favour of the Auction Purchaser. Appeal against the order of the Recovery Officer was filed under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 before the Debt Recovery Tribunal which was dismissed on 20th May, 2025 by the Debts Recovery Tribunal by the impugned order.

5. I have heard Mr. Nimish Mishra, Learned Counsel for the Appellant, Mr. Krishna Raj Thakker, Learned Senior Advocate for the Respondent No. 3 i.e. Auction Purchaser and Learned Senior Advocate for Respondent No. 4, Mr. Malay Kumar Ghosh.

6. Learned Counsel for the Appellant would submit that the Appellant is an interested bidder in the e-auction to be conducted by the Recovery Officer on 05.03.2025. At the very outset, Learned Counsel for the Appellant would submit that the issue of jurisdiction of the Recovery Officer or other related issues regarding territorial jurisdiction or the liquidation proceedings, which were raised before the Learned DRT, are not being pressed in this Appeal. Rather Appellant is confining the Appeal on the issue of deliberate exclusion of the Appellant to participate in the bidding process conducted by the Recovery Officer.

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7. Learned Counsel for the Appellant would submit that the technical bid of the Appellant was rejected by the Recovery Officer on 28.02.2025 on the ground of non-availability of the required documents as mentioned in the Sale Notice. Learned Counsel would submit that the documents as required in the Sale Notice were not at all required under the statute. Documents were only called for by the Recovery Officer out of his own whims. It is further submitted that the Appellant submitted the documents on 28.02.2025. Thereafter, again on 04.03.2025, he approached the Recovery Officer offering to submit the documents and to deposit them but the Recovery Officer did not accept the request. Learned Counsel would submit that there was fraud and collusion of the successful bidder with the contesting Respondent No. 4 i.e. Invent Asset Securitisation and Reconstruction Private Limited as well as the Recovery Officer. There were irregularities having been committed by the Recovery Officer.

8. Learned Counsel for the Appellant would further submit that there are two secured creditors. Out of the two, Respondent No. 1 Rare Asset Reconstruction Limited was supporting the cause of the Appellant as the Appellant offered a higher amount of Rs. 60 crores in his application although Learned Counsel during the course of arguments submits that the Appellant is ready and willing to deposit an amount of Rs. 65 crores which is much higher than the bid made by the Auction Purchaser. Learned Counsel would further submit that the Recovery Officer may be directed to

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conduct the inter se bidding between the Appellant and the successful Auction Purchaser. Appellant is prepared to participate in the inter se bidding. Learned Counsel would further submit that law is well settled that an endeavour should be made to fetch the highest value of the secured assets in auction as it would be in the interest of the secured creditor as well as the borrower.

9. Learned Counsel would further submit that the requirement of the documents in the Sale Notice was not a statutory requirement. Even if the documents could not be submitted along with the bid, Appellant made an effort on 04.03.2025 to submit the documents which were not accepted by the Recovery Officer. It was the first opportunity to the Appellant to place on record the documents as order dated 28.02.2025 passed by Recovery Officer was uploaded on 03.03.2025 and the Application was moved by the Appellant on 04.03.2025. 1st and 2nd March, 2025 were Saturday and Sunday. Learned Counsel for the Appellant would further submit that the Recovery Officer has not passed any order on the letter dated 04.03.2025 submitted by the Appellants.

10. Learned Counsel for the Appellant would further submit that it was the option of the Appellant either to move the Recovery Officer under Rule 60 and 61 of the Second Schedule of Income Tax Act, 1961 or to prefer an Appeal under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993. Appellant preferred to file the Appeal under Section 30 of the Recovery of Debts and Bankruptcy Act,

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1993 which is in accordance with law. Learned Counsel would further submit that there cannot be any estoppel against law. Even if he accepted the terms and conditions of the Sale Notice and submitted the bid even then he can challenge the illegalities or irregularities in the Sale Notice.

11. Learned Counsel for the Appellant would further submit that he challenged the order of the Recovery Officer in Appeal before the DRT which was dismissed on unfounded grounds.

12. Learned Counsel would further submit that the Appellant challenged the action of the Recovery Officer on the ground of fraud, collusion, irregularities and biasness, the required papers were duly submitted by the Appellant before the auction. Objection was filed by the Appellant before conducting the e-auction before the Recovery Officer but the same was not disposed of by the Recovery Officer. Learned Counsel for the Appellant vehemently argued that the Appellant is still ready and willing to deposit the amount of Rs. 65 crores which is much higher than the accepted bid amount. Learned Counsel would further submit that even the confirmed sale can be set aside on the ground of material irregularities and illegalities. Reliance is placed upon Para No. 218 of (***Celir LLP versus Sumati Prasad Bafna and Others) 2024 SCC OnLine SC 3727.*** Learned Counsel for the Appellant has placed reliance upon following judgments.

(i) (M.R. Vasumathi versus Authorized Officer and others) 2026 SCC OnLine SC 1103. [redacted]

(ii) (FCS Software Solutions Ltd. versus LA Medical Devices Limited and others) (2008) 10 SCC 440.

(iii) LICA (P) Ltd. versus Official Liquidator and Another (2000) 6 SCC 79,

(iv) Divya Manufacturing Company (P) Ltd. Tirupati Woollen Mills Shramik Sangharsha Samity and Another (2000) 6 SCC 69,

(v) Navalkha and sons versus Sri Ramanya Das and others (1969) 3 SCC 537,

(vi) Kamal Kishore Dheer versus Debts Recovery Appellate Tribunal and others (2022) SCC OnLine All 1082,

(vii) Valji Khimji and Company versus Official Liquidator or Hindustan Nitro Product (Gujarat) Limited and others (2008) 9 SCC 299,

(viii) Agarwal Tracom Private Limited versus Punjab National Bank and others (2018) 1 SCC 626,

(ix) Saheb Khan versus Mohd, Yousuffuddin and others (2006) 4 SCC 476,

(x) Sanjay Sharma versus Kotak Mahindra Bank Ltd. And Others 2024 SCC OnLine SC 4589.

13. Learned Senior Advocate for Respondent No. 3, Mr. Krishna Raj Thakker opposed the Appeal. Learned Senior Advocate for the Auction Purchaser would submit that the Appellant was required to file the documents as per the Sale Notice, but the bid was submitted on 28.02.2025 at 1.20 p.m. while the time for submitting the bid was upto 1 p.m. only. Learned Senior Advocate would further submit that

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the Appellant is a Company wherein the Board Resolution was a necessary document which was sought for in the Sale Notice. Appellant participated in the process of submitting the bid. Now he cannot challenge the terms and conditions of the Sale Notice on any ground whatsoever it may be. Learned Senior Advocate would further submit that the bid was submitted on 28th February, 2025 at 1.20 p.m. and only seven pages were submitted as endorsed by the Recovery Officer. An improvement is made in Para (vi) of the Appeal which could not be substantiated on records. Learned Senior Advocate has further submitted that since the bid was submitted beyond time, it was rightly not considered. The Appellant since participated in the Auction Proceedings by submitting a bid, now he cannot challenge the terms and conditions of the Sale Notice. Learned Senior Advocate would further submit that no offer of higher price was ever given by the Appellant. No details of fraud have been stated in the Application and there was no fraud, collusion or irregularity in conducting the sale. Learned Senior Advocate has placed reliance upon following case laws:-

(i) Saheb Khan versus Mohd. Yousufuddin and Others (2006) 4 SCC 476.

(ii) Suzuki Parasrampuria Suitings Private Limited versus Official Liquidator of Mahendra Petrochemicals Limited(In Liquidation) and Others (2018) 10 SCC 707.

(iii) Meerut Development Authority versus Association of Management studies and another with Pawan

[redacted]

Kumar Agarwal versus Meerut Development Authority and Another (2009) 6 SCC 171.

(iv) Vedika Procon Private Limited versus Balleshwar Greens Private Limited (2015) 10 SCC 94.

14. Learned Senior Advocate for the Respondent No. 4 Invent Asset Securitization and Reconstruction Pvt. Ltd. would submit that the conduct of the Appellant has to be looked into while considering the Appeal. Learned Senior Advocate would submit that the order of the Recovery Officer dated 04.04.2025 itself is self-speaking which deals with all the issues raised by the Appellant which order is not challenged and attained finality. The conduct of the Appellant estopps him from challenging the contents of the Sale Notice. The Writ Petition filed by the Appellants was withdrawn by the Appellants. No offer of Rs. 65 crore is made by the Appellants before the Recovery Officer.

15. Undisputedly, Recovery Certificate No. 01 of 2022 was pending before the Recovery Officer Debt Recovery Tribunal-1 Kolkata which was issued in O.A. No. 136 of 2001. The Recovery Officer issued a Sale Notice on 17.01.2025 fixing the Sale on 05.03.2025 between 1 p.m. to 2 p.m. with three minutes unlimited extension by e-auction and the bid shall take place through OnLine Electronic bidding. It was also mentioned in the Notice that for further details contact Mr. Manoj Jha, Mobile No. 7498996888 for details and inspection. In Para No. 03, necessary documents required to be filed along with the bid form which reads as under:

"3. The EMD to the extent 10% reserve price shall be deposited by the bidder 28.02.25 before 01:00 p.m. by way of Demand Draft/Pay Order

[redacted]

in favour of "Recovery Officer, DRT-1. Kolkata and details of the bidder in bid form and bid declaration form along with copy of PAN card, Address proof and identity proof, E-mail ID, Mobile No. and in case of the company or any other document confirming representation/attorney of the company, board resolution for participation in bid, directors details and KYC, Certificate for in-corporation, AOA and MOA, and the receipt/counter file of such deposit shall be deposited before the Recovery Officer 1, DRT 1, Kolkata. EMD deposited thereafter shall not be considered for participation in the e-auction. (Note: only hardcopy of the documents will be entertained by this Tribunal)

Bidders are advised to go through the website https://drt.auctiontiger.net for detailed terms and conditions of auction sale and procedure etc... before submitting their Bids for taking part in the e-auction sale proceedings.

The bidders may participate in the e-auction for bidding from their place of choice. Internet connectivity shall have to be ensured by bidder himself DRT/Bank/Service Provider shall not be held responsible for the internet connectivity, network problems, system crash down, power failure etc."

Description of the property to be sold was "city survey No. 78/1, 78/2, 78/3 Subhas Road Jogeswari East, Mumbai 400060."

16. In pursuance of the Sale Notice, Appellant submitted the bid documents before the Recovery Officer. Recovery Officer passed an order on 28.02.2025 relevant portion is as under:

"Today is last date of the bid submission by 01:00 p.m. As per records Four bids were received as on 28.02.25.

After scrutiny of the Four bids along with their documents. It is found that three bids were eligible for participation in the bidding process which is held on 05.03.25.

One bid in the name of Company, Lloyds Reality Developers Limited is found in-eligible due to lack of necessary documents as per Sale notice and Sale proclamation notice. (I.e. bid form, board resolution for participation in bid, all directors details of the company along with KYC and MOA of company) which is not enclosed in their documents.

[redacted]

An authorized person of the company, Lloyds Reality Developers Limited is directed to collect their DD no. 009203 for Rs. 5,43,30,500/- from this bench."

17. Thereafter, a letter was sent by Appellant through email dated 04.03.2025 to the DRT-1 Kolkata (ii) Rare Asset Reconstruction Limited (iii) Official Liquidator and (iv) Recovery Officer DRT-1 Kolkata.

18. On 05.03.2025 e-auction was conducted wherein the Respondent No. 4 Malayvrunda Creative Homemakers Private Limited was declared as the highest bidder and was declared as successful purchaser. He was directed to deposit the 25% of the amount of Rs. 58,13,36,350/- by 06.03.2025 and rest 75% will be deposited as per proclamation of sale. On 06.03.2025, 25% of the amount was deposited and the successful purchaser was directed to deposit the remain 75% amount on or before 19.03.2025.

19. Pertinently on 05.03.2025 Rare Asset Reconstruction Limited wrote a letter to the Recovery Officer to defer the sale or issue fresh Sale Notice. Thereafter, the Appellant M/s Lloyds Realty Developers Limited may also participate in the Auction after submission of requisite documents. On 20.03.2025 Recovery Officer passed an order that total bid amount along with the poundage fee is deposited by the successful purchaser.

20. I.A. No. 100 of 2025 is filed by the Appellants before the Recovery Officer on 04.04.2025 communicating that the orders of the Recovery Officer dated 28.02.2025, 05.03.2025, 06.03.2025 and 20.03.2025 are challenged before the DRT and to stay the further proceedings. I.A.

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was dismissed by the Recovery Officer on 04.04.2025 by a detailed order negating all the pleas raised by the Appellant. It was further held that there is provision either in the Recovery of Debts and Bankruptcy Act, 1993 or Income Tax Act, 1961 to move such Application. It is further recorded that the Application is not filed even under Rule 60 of the Second Schedule of the Income Tax Act, 1961 as there is requirement of deposit of the amount. Further, it was held that no irregularity was committed in the auction. Pertinently, the order dated 04.04.2025 is not challenged by the Appellant.

21. In the Appeal filed before the Debt Recovery Tribunal, Learned DRT recorded a finding that a sale by way of public auction cannot be set aside until there is any material irregularity or illegality committed in holding the auction or if such auction is vitiated by fraud or collusion. Learned DRT held that the rejection of the bid by the Appellant was validly rejected by the Recovery Officer. Appellant was not prevented to participate in the e-auction. Bid was submitted after the date and time of acceptance of bid with insufficient documents. There was no fraud, collusion or material irregularity. It was further held that the prayer for inter se bidding could not be allowed. Appeal was filed without Board Resolution of the Appellant Company to challenge the order of the Recovery Officer in Appeal. Accordingly, Appeal filed before the Debt Recovery Tribunal was dismissed.

22. It is settled legal proposition as has been held in the case of ***M. Rajendran and Others versus KPK Oils and***

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Protiens India Pvt. Ltd. and Others (2026) 3 SCC 505, that a public auction cannot be set aside unless it is proved that there was fraud, collusion or material illegality and irregularity committed in conducting the e-auction. The same view was taken by the Hon'ble Apex Court in ***Sanjay Sharma versus Kotak Mahindra Bank Ltd. and Others 2024 SCC OnLIne SC 4589*** wherein it was held that " sale by way of public auction cannot be set aside until there is any material irregularity and /or illegality committed in holding the auction or if such auction was vitiated by any fraud or collusion." Hon'ble Supreme Court has placed reliance upon the judgment of ***Celir LLP versus Sumati Prasad Bafna & Others 2024 SCC OnLine SC 3727,*** wherein it was held that –

"218. Any sale by auction or other public procurement methods once already confirmed or concluded ought not to be set-aside or Interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or underbidding. Mere irregularity or deviation from a rule that does not have any fundamental procedural error does not take away the foundation of authority for such a proceeding. In such cases, courts, in particular, should be mindful to refrain entertaining any ground for challenging an auction which either could have been taken earlier before the sale was conducted and confirmed or where no substantial injury has been caused on account of such irregularity."

23. In ***M.R. Vasumati versus Authorised Officer and Others 2026 SCC OnLine SC 1103,*** it was held that "*while it is trite that the rights of an auction purchaser and the sanctity of a confirmed sale ordinarily merit due protection, such protection is by no means absolute. It must yield where the very process engendering the sale is*

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demonstrated to be legally infirm or incongruous with the statutory framework."

24. In ***FCS Software Solutions Ltd. Versus LA Medical Devices Limited and Others (2008) 10 SCC 440*** placing reliance upon ***Navalkha & Sons versus Ramanya Das (1969) 3 SCC 537***, Hon'ble Apex Court held that *"once the Court comes to the conclusion that a price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received."* In the present case, reserve price was fixed at Rs. 54,33,05,000/- while the Auction Purchaser submitted a bid of Rs. 50,13,36,350/-. Hence, it is established that the property was sold at a much higher price than the reserve price.

25. In ***Divya Manufacturing Company (P) Ltd. Tirupati Woollen Mills Shramik Sangharsha Samity and another versus Union Bank of India and others Official Liquidator and others (2000) 6 SCC 69*** also Hon'ble Apex Court held 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."*

26. In ***Valji Khimji and Company versus Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others (2008) 9 SCC 299,*** it was held that- "once the sale is confirmed by the Authority, certain rights accrue in favour of the Auction Purchaser and these rights

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cannot be extinguished except in exceptional cases such a fraud."

27. All the case laws as referred above have been relied upon by the Learned Counsel for the Appellant. It is well settled law that after confirmation of the sale, certain rights accrue in favour of the Auction Purchaser which can only be interfered or the sale can be set aside only in exceptional cases as wherein there is an element of fraud, collusion or material illegality or irregularity in conducting the sale.

28. Learned Counsel for the Auction Purchaser has placed reliance upon ***Saheb Khan versus Mohd. Yousufuddin and Others (2006) 4 SCC 476*** wherein Hon'ble Apex Court held that-

> *"Therefore before the sale can be set aside merely establishing a material irregularity or fraud will not do. The applicant must go further and establish to the satisfaction of the court that the material irregularity or fraud has resulted in substantial injury to the applicant. Conversely even if the applicant has suffered substantial injury by reason of the sale, this would not be sufficient to set the sale aside unless substantial injury has been occasioned by a material irregularity or fraud in publishing or conducting the sale. (See Dhirendra Nath Gorai v. Sudhir Chandra Ghosh AIR 1964 SC 1300, Jaswantlal Natvarlal Thakkar v. Sushilaben Manilal Dangarwala 1991 Supp (2) SCC 691 and Kadiyala Rama Rao v. Gutala Kahna Rao (200) 3 SCC 87."*

29. Reliance is also placed by the Learned Counsel for the Auction Purchaser on ***Meerut Development Authority versus Association of Management studies and another with Pawan Kumar Agarwal versus Meerut Development Authority and Another (2009) 6 SCC 171,*** wherein in Para 27, 28, 29 it was held that-

> *"27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in*

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response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

28. It is so well settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for disposal of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process.

29. The Authority has the right not to accept the highest bid and even to c prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism."

30. Learned Counsel for the Auction Purchaser further placed reliance upon ***Vedika Procon Private Limited versus Balleshwar Greens Private Limited (2015) 10 SCC 94*** wherein relying upon judgment of ***Navalkha & Sons versus Ramnanya Das, (1969) 3 SCC 537,*** it was held that "*a subsequent higher offer is no valid ground for refusing confirmation of a sale or offer already made."* Learned Counsel for the Appellant also placed reliance upon the same judgment.

31. In ***Golden Food Products India versus State of Uttar Pradesh and others 2026 SCC OnLine SC 24,*** the Hon'ble Apex Court reiterated the law that "*once the auction has been held in accordance with law and there had been no fraud, collusion or any other infirmity in the holding of the Auction and the earnest money has been validly deposited, there could not have been any subsequent cancellation of the bid."*

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32. Reliance is also placed upon judgment of ***Jindal Steel Power Limited and another versus Union of India and others, 2023 SCC OnLine Del 4401*** which is not applicable to the facts of the case.

33. Admittedly, in the Sale Notice dated 17.01.2025 last date of submission of the bid documents along with the required documents mentioned in the Sale Notice was 28.02.2025 upto 1 p.m. Admittedly, the Appellant submitted bid documents on 28.02.2025 at 1.20 p.m. and only seven papers were submitted as was received by the Recovery Officer. It means that the Appellant accepted the terms and conditions of the Sale Notice and after accepting the same, he submitted the bid documents with an incomplete enclosure. Recovery Officer vide order dated 28.02.2025 did not accept the bid of the Appellant. When the Appellant voluntarily entered into the fray and submitted the bid documents without complying the conditions of the Sale Notice and thereafter subsequently, he challenged the contents of the Sale Notice to the effect that the documents required should not and could not be called for by the Recovery Officer, such a subsequent challenge is not permissible under the law as it is violative of the principles of approbate and reprobate as has been held by the Hon'ble Supreme Court in ***Suzuki Parasrampuria Suitings Private Limited versus Official Liquidator of Mahendra Petrochemicals Limited(In Liquidation) and Others (2018) 10 SCC 707*** wherein it was held that *"A party cannot be permitted to approbate and reprobate on the*

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same facts and take inconsistent shifting stands." Hon'ble Apex Court has placed reliance upon ***Joint Action Committee of AIR Line Pilots' Assn. of India v. DGCA, (2011) 5 SCC 435*** wherein it was held that –

> *2. "The doctrine of election is based on the rule of estoppel-the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity.... Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily."*

34. Accordingly, now the Appellant is estopped from challenging the terms and conditions of the Sale Notice.

35. As far as the requirement of the documents mentioned in the Sale Notice are concerned, Appellant is a company wherein the Resolution of the Board of Directors is a necessary document for participating in the Auction Proceedings which was sought for by the Recovery Officer which cannot be sought to be any illegality or irregularity.

36. Bid documents were required to be filed by 1 p.m. on 28.02.2025. The documents were received by the Recovery Officer on 28.02.2025 at 1.20 p.m. only seven pages were received which did not include the required documents as per the Sale Notice. The bid submitted by the Appellants was rejected by the Recovery Officer for want of necessary documents as per the Sale Notice i.e. Bid Form, Board Resolution Form, Participation in Bid or Director's details of the Company along with KYC and MOA of Company. It is not disputed that these documents were not required in the Sale Notice or these documents were submitted along with

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the bid documents. A letter dated 04.03.2025 is sent by the Appellants to the Recovery Officer stating that the documents are being resubmitted. The ground in the order rejecting the bid is unfounded. A letter which was sent through email on 05.03.2025 nowhere states that it is a case of fraud or collusion. Further, a Writ Petition was filed before the Hon'ble High Court at Calcutta challenging the order of the Recovery Officer but even in that Writ Petition, no ground of fraud, collusion was taken. Even no ground was taken that the Appellant is offering a higher amount of Rs. 65 crores. For the first time, before the Debt Recovery Tribunal in the Appea,l an offer of Rs. 60 crores was made by the Appellant. Even in the Appeal before the DRT, grounds of fraud or collusion or illegalities were not taken by the Appellants. It is trite law that the ground upon which fraud is alleged should be specific. But in the present case, nowhere any ground was taken or any plea was raised that fraud was committed by the Recovery Officer or there was any biasness in the proceedings by Recovery Officer.

37. A plea is raised that the Appellant could have moved an Application before the Recovery Officer under Rule 60 of the Second Schedule of Income Tax Act. 1961. But he preferred to file an Appeal before the Debt Recovery Tribunal. It was held in ***Kamal Kishore Dheer versus Debts Recovery Appellate Tribunal and others 2022 SCC OnLine All 1082*** wherein it was held that *"an Appeal under Section 30 of the RDDBFI Act, 1993 can be preferred by a person aggrieved by the Recovery Officer's orders notwithstanding*

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the fact that he has not invoked the provisions of Rule 60 or 61 of the Second Schedule to the Income Tax Act, 1961."

38. Accordingly, even if the Appellant has not applied under Rule 60 and 61 of the Second Schedule of Income Tax Act, 1961, Appeal filed by the Appellant under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 is maintainable.

39. Learned Counsel for the Appellant would submit that the Appellant is ready and willing to make a deposit of Rs. 65 crores and inter se bid may also be permitted between the Auction Purchaser and the Appellant. We are not in agreement with the submissions made by the Learned Counsel for the Appellant. Law is well settled that the confirmed auction sale can be set aside on certain grounds of fraud, collusion or material illegality or irregularity. It is also settled proposition that if subsequent higher offer is made, that cannot be considered in view of the confirmed auction sale wherein certain rights accrue in favour of the Auction Purchaser. Further, it was an afterthought by the Appellant, although such offer was made by him for the first time when the Appeal was pending before the DRT. Such an offer could not be accepted at this stage or even at the stage of Appeal preferred before the DRT. Even inter se bidding is not permissible when the auction sale has already been confirmed in favour of the Auction Purchaser.

40. Further, at this stage, we simply observe that one of the secured Creditors Invent Asset Securitization and Reconstruction Pvt. Ltd. is supporting the cause of the

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Auction Purchaser. On this count it is submitted that there is a collusion between the Auction Purchaser as well as the Invent Asset Reconstruction Company. As has been held in the earlier part of the order, a specific plea of fraud or collusion has to be taken by the Appellant in the pleadings but no such plea is made in the pleadings. So ,this could not be a ground of setting aside a confirmed sale.

41. On the basis of discussions made above, we are of the considered opinion that the Learned DRT has rightly recorded the findings which did not warrant any interference in the Appeal. Appeal lacks merit and is liable to be dismissed.

Order

Appeal is dismissed. Impugned order dated 20th May, 2025 passed by Learned DRT-1 Kolkata in Appeal No. 01 of 2025 ***(Lloyds Realty Developers Limited versus Rare Asset Reconstruction Limited, and others)*** is confirmed.

No Order as to costs.

File be consigned to Record Room.

Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 18th day of August, 2026. [redacted]

(Anil Kumar Srivastava,J)
Chairperson
18.08.2026

Dated 18th August. 2026
/tp

After pronouncement of the judgment, Learned Counsel for the Appellant Mr. D. Basu Roy prays for staying the operation of the impugned judgment.

Having considered the submissions, we found no ground to stay the operation of the impugned judgment.

[redacted]

(Anil Kumar Srivastava,J)
Chairperson

Dated 18th August. 2026
/tp