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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CO.PET. 44/1997

TIMES GUARANTY FINANCIALS LTD. .... Petitioner

Through:

versus

SIDDHARTH SPIN FAB LTD. .... Respondent

Through: Mr. D. Bhattacharya, Standing  
Counsel for OL.  
Mr. Brijesh Sharma, Advocate with  
Mr. Ravinder Singh for Realtime  
Biometrics India Pvt. Ltd.  
Mr. Ajit Rajput, Advocate for  
Applicant in CO. APPL. 37/2023  
with Mr. Gyanendra Kumar  
Sharma, AR of Applicant.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**  
**06.02.2023**

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**CO. APPL. 35/2023 (under Rule 9 of the Company (Court) Rules, 1959 on behalf of OL) & CO. APPL. 37/2023 (under Rule 9 of the Company (Court) Rules, 1959 seeking permission to purchase the property in terms of sale notice published by OL)**

1. In compliance with order dated 03<sup>rd</sup> November, 2022 in C.A. No. 645/2022, the Official Liquidator [*hereinafter "the OL"*] published E-Auction Sale Notice of properties of Company (in Liqn.) being moveable assets as well as land and building situated at Plot No. E-1, E-2 and E-3,

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UPSIDC Industrial Area, Gajraula, Distt. Jyotibaphule Nagar, U.P.  
[*hereinafter "the property"*]. Said auction was conducted through M/s

Railtel Corporation of India Ltd. on 06<sup>th</sup> January, 2023. Realtime Biometrics India Pvt. Ltd. [hereinafter "**Realtime Biometrics**"] emerged as the highest bidder who has submitted a bid of Rs. 4,49,63,100/-.

2. OL has filed C.A. No. 35/2023 for confirming the bid, issuing sale certificate and execution of sale deed of the property, in favour of Realtime Biometrics.

3. Simultaneously, Applicant viz. Proprietor of See Automation & Engineers in C.A. No. 37/2023 [hereinafter "**See Automation**"], who is the second highest bidder, expresses his intention to bid at Rs. 4,60,00,000/-. He also alleges violation of auction rules and states that he was deprived of an opportunity to submit his enhanced bid since the bidding process was arbitrarily terminated.

4. Court has heard the counsel for parties. OL has produced a copy of E-auction Sale Notice (Annexure-B) in C.A. No. 35/2023 as also the bid log details (Annexure-E) in reply to C.A. No. 37/2023, relevant portions whereof are extracted hereinbelow:

*"SALE NOTICE/ SCHEDULE No. -1  
IN THE HIGH COURT OF DELHI AT NEW DELHI  
(ORIGINAL COMPANY JURISDICTION)*

*COMPANY PETITION NO. 44/1997*

*IN THE MATTER OF THE COMPANIES ACT, 1956  
AND*

*IN THE MATTER OF SIDDHRATH SPIN FAB LIMITED (IN LIQN.)*

**E-AUCTION SALE NOTICE**

*Bids are invited for E-auction of the following assets and properties of the company (In Liqn) " As is Where is Whatever there is basis" from the*

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prospective buyers. The details of Reserve Price and EMD are as under:

Details of Assets	Location	Reserve Price	EMD (10% of the Reserve Price)
Lease Hold Land & Building, Plant & Machinery (Land Area 7203.33 Sq.m.)	Plot No.E-1,E-2 & E-3, UPSIDE Industrial Area, Gajraula, Distt.- Jyotibaphule Nagar U. P.)	Rs 3,56,85,000/- (Three Crore Fifty Six Lakhs Eighty Five Thousand Only)	Rs. 35,68,500/- (Thirty Five Lakhs Sixty Eight thousand Five Hundred Only)

**Note:-**

1. The above information as indicated in the table is based on the valuation report dated 14.01.2019 of Surendra Kumar & Associates, the said valuer appointed by PICUP as per Hon'ble High Court of Delhi order dated 02.05.2018.
2. Inspection of the above assets/properties will be held on 27.12.2022 and 28.12.2022 between 11:00 AM to 5:00 PM. At the time of taking inspection of the aforesaid assets/ properties of the company (In Liqn), all the interested buyers are requested to follow the advisory issued by the District Administration of the area in respect of spread of COVID-19 in the interest of their own wellbeing and in public interest.
3. The e-auction will be conducted through the website <https://olauction.enivida.com> on 06.01.2023 between 11.00 am to 3.00pm. with auto time extension of 10 minutes each time if the bid is made in the Last 10 minutes before the close of e- auction.
4. The bidders/tenderers should submit their online offer through the website <https://olauction.enivida.com>.
5. The tenderers should collect the detail information, terms & condition through the website <https://olauction.enivida.com> and may also take help from the below contacts:-  
Navneet Mishra 9355030630; Amrendra Kumar 8448288980; Anand Kumar 9355030602.
6. The EMD amount (interest free) should be deposited through the modes available on the portal. The last date of participation in e-Auction and online submission of EMD is 04.01.2023.
7. This sale is subject to confirmation by the Hon'ble High Court of Delhi.

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(A.K. MAHAPATRA)  
OFFICIAL LIQUIDATOR  
HIGH COURT OD DELHI

PLACE:- NEW DELHI  
DATE:- ”

[emphasis supplied]

• **Bid Log Details**

Bid Log Details :

Time Left : 00:00:00

Sl	Bid Date/Time	Bidder Name	Bid Value (Rs.)	IP Address
1	05-01-2023 15:29:36	Ravander Singh	4,49,63,100.00	46.115.105.143
2	05-01-2023 15:29:32	Gyanendra Kumar Sharma	4,38,92,550.00	125.99.206.230
3	05-01-2023 15:29:14	Charu Verma	4,35,39,700.00	46.115.105.143
4	05-01-2023 15:29:08	Gyanendra Kumar Sharma	4,28,32,000.00	125.99.206.230
5	05-01-2023 15:28:27	Ravander Singh	4,24,66,180.00	46.115.105.143
6	05-01-2023 15:28:11	Gyanendra Kumar Sharma	4,19,04,600.00	125.99.206.230
7	05-01-2023 15:15:02	Ravander Singh	4,06,00,900.00	46.115.105.143
8	05-01-2023 15:12:30	Charu Verma	3,99,67,200.00	46.115.105.143
9	05-01-2023 15:11:23	Gyanendra Kumar Sharma	3,99,10,350.00	125.99.206.230
10	05-01-2023 15:01:51	Charu Verma	3,92,53,500.00	46.115.105.143
11	05-01-2023 15:00:41	Gyanendra Kumar Sharma	3,88,06,650.00	125.99.206.230
12	05-01-2023 14:59:16	Ravander Singh	3,85,99,800.00	157.37.156.146
13	05-01-2023 14:52:39	Gyanendra Kumar Sharma	3,81,82,350.00	125.99.206.230
14	05-01-2023 13:47:01	Ravander Singh	3,79,25,100.00	46.115.105.143
15	05-01-2023 13:46:35	Charu Verma	3,74,69,250.00	46.115.105.143
16	05-01-2023 13:46:39	Gyanendra Kumar Sharma	3,71,12,400.00	157.37.156.146
17	05-01-2023 11:44:01	Ravander Singh	3,67,56,650.00	46.115.105.143

Sl	Bid Date/Time	Bidder Name	Bid Value (Rs.)	IP Address
18	05-01-2023 11:09:41	Charu Verma	3,63,96,700.00	46.115.105.143
19	05-01-2023 11:07:47	Ravander Singh	3,60,41,850.00	157.37.156.146

5. From the above log, it manifests that last bid was received at 15:29:36 hours for Rs. 4,49,63,100/- from Mr. Ravander Singh of Realtime Biometrics, the highest bidder. In terms of clause 3 of E-auction Sale Notice, the bidding process had to be automatically extended for 10 minutes each time if the bid is made in the last 10 minutes before close of auction. Mr. Ravander Singh argues that automatic extensions are limited to three instances, however no reference is made to any rule/ provision regarding the same. Clause 3 does not envisage any restriction on the number of times automatic extension can be granted. The Court has queried counsel for OL, who confirms that automatic extension of time is not limited to three instances. The auction process has to be fair and

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transparent with the objective of maximising the returns, particularly when auction is of the assets of a Company in liquidation and accepting the higher offer would result in a better outcome for the company's creditors. Here the second highest bidder has not been afforded a fair opportunity to purchase the property. Thus, Court finds merit in the contention of Applicant that he was deprived of an opportunity of improving his bid as the bidding process closed at 15:30:00 Hours, i.e., 3:30 PM, immediately after the aforesaid last bid by Mr. Singh of Realtime Biometrics.

6. In above circumstances, during the hearing, Applicant and his counsel, in order to demonstrate *bonafide* intentions state that they can offer a substantially higher amount than the highest bidder and quoted Rs.5,00,00,000/-. This led to both parties outbidding each other and improving upon their earlier offers or matching each other. Thereafter, a stage was reached where both parties were willing to purchase the property at 6,50,00,000/- and perhaps would have still improved upon their bids.

7. It has thus emerged that there is a substantial difference of approximately Rs. 2 crores between the highest bid and the price being offered by both parties in the present hearing. No doubt, the highest bidder generally has the right to purchase the property if their bid is accepted by the Court overseeing the liquidation process, however, if a third-party makes an offer for the property that is substantially higher than the highest bid, received during the auction, the court may choose to accept the higher offer instead. Nonetheless, herein the bidding process,

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was concluded contrary to the auction rules. It has not resulted in fetching the true value of the property. It is also a settled position in law that sale pursuant to a public auction can be set aside on grounds of irregularity in the conduct of the auction process. Since the bidding process was concluded in contravention of terms of the E-auction Sale Notice and considering that auction of the property is for the best interest of creditors, in the opinion of the Court, a fresh auction should be conducted by OL for the property.

8. In view of the above, applications are disposed of with following directions:

- (i) Auction conducted on 06<sup>th</sup> January, 2023 is annulled.
- (ii) The subject property is put to fresh open auction to be conducted by OL within one month from today, wherein Reserve Price shall be kept at Rs. 6,50,00,000/-.
- (iii) As agreed, See Automation shall deposit 25% of the revised Reserve Price, within a period of ten days from today, after adjusting the same against the earnest money deposit already paid. Realtime Biometrics shall also deposit 25% of the fresh Reserve Price, within a period of ten days from today, after adjusting the same against the earnest money deposit and 25% of its earlier bid amount already paid.
- (iv) OL is permitted to publish a fresh E-auction Sale Notice as per directions in order dated 03<sup>rd</sup> November, 2022, in the newspapers namely Times of India (English edition) and Dainik Jagran (Hindi edition) with circulation in Delhi-NCR and U.P.

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- (v) OL is permitted to adjust the cost for the auction against the proceeds.
- (vi) Auction of the property is permitted *via* M/s Railtel Corporation of India Ltd. for e-auction.
- (vii) All other terms and conditions for the auction shall remain the same as the E-auction Sale Notice contained at Annexure-B of C.A. No. 35/2023.

9. With the above directions, above captioned applications are disposed of.

**SANJEEV NARULA, J**

**FEBRUARY 6, 2023**

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