Allahabad Bank Etc. Etc vs Bengal Paper Mills Co. Ltd. And Others on 20 April, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1715, 1999 (4) SCC 383, 1999 AIR SCW 1344, 1999 (6) SRJ 396, (1999) 2 SCALE 667.3, 1999 (3) COM LJ 287 SC, 1999 (2) SCALE 667, 1999 (4) ADSC 251, 1999 (2) LRI 585, (1999) 3 JT 168 (SC), 1999 (2) SCALESP 667, (1999) 96 COMCAS 804, (1999) 2 MAD LW 602, (1999) 2 SCJ 407, (1999) 34 CORLA 248, (1999) 4 SUPREME 258, (1999) BANKJ 881, (2000) 2 BANKCLR 14

Bench: S P Bharucha, R C Lahoti

PETITIONER:
ALLAHABAD BANK ETC. ETC.

Vs.

RESPONDENT:
BENGAL PAPER MILLS CO. LTD. AND OTHERS

DATE OF JUDGMENT: 13/04/1999

BENCH:
S P Bharucha, R C Lahoti,

JUDGMENT:

Bharucha, J.

The relevant facts need to be set out to appreciate what is involved in these appeals from the judgment and order of a Division Bench of the High Court at Calcutta.

In June, 1985 a winding petition was filed against the first respondent company, now in liquidation (the said company). On 30th September, 1986 a mortgage suit (Title Suit No.143 of 1986) was filed by the Punjab National Bank and the Bank of Baroda against the said company for recovery of the sum of Rs.1,94,24,886.37 before the Subordinate Judge, Burdwan. On the same day a hypothecation suit (Suit No.736 of 1986) was filed by the United Bank of India, the Punjab National Bank and American Express against the said company for recovery of the sums of Rs.20,46,010.31 and 17,87,796.49 in the Calcutta High Court. On the same day, a hypothecation suit (Suit No.737 of 1986) was filed by the Allahabad Bank against the said company for recovery of the sums of Rs.29,18,360.65 and 11,64,370.00 in the Calcutta High Court. Again on the same day, the Punjab National Bank and American Express filed a hypothecation suit (Suit No.738 of 1986) against the

said company for the recovery of the sums of Rs.5,30,38,922.28 and Rs.2,14,548.00 in the Calcutta High Court. On 3rd December, 1986 the Calcutta High Court passed an interim order in Suit No.738 of 1986 appointing joint receivers. From time to time, further orders were passed in the same suit for inventory and sale of the hypothecated goods.

On 24th April, 1987, in the winding up petition aforementioned, the said company was ordered to be wound up and the Official Liquidator was directed to take possession of the said companys assets and properties. On 15th May, 1987 an application was moved under Section 446 of the Companies Act by the Punjab National Bank and American Express for leave to carry on with their suits; also for transfer of the mortgage suit filed in the Burdwan court to the Calcutta High Court. On 15th May, 1987 the application was allowed and the suit transferred from the Burdwan court to the Calcutta High Court was numbered (T.C. Suit No.5 of 1987). In June, 1987 the Allahabad Bank made an application under Section 446 of the Companies Act for leave to carry on with its suit and on 26th June, 1987 such leave was granted. On 25th November, 1987, the Official Liquidator wrote to the joint receivers in respect of the possession of the assets and records of the said company held by them. On 30th November, 1987 the joint receivers replied to the Official Liquidator; therein they stated that the hypothecated goods could not be sold due to lack of offers.

On 11/12th January, 1988 the Punjab National Bank made an application to the Calcutta High Court in the transferred suit praying that the Official Liquidator should be appointed receiver in place and stead of the joint receivers in Suit No.738 of 1986 with directions to take possession, make inventory and sell the securities both in the transferred suit as well as in Suit No. 738 of 1986. The application was allowed on 12th January, 1988. On 28th April, 1988 the joint receivers wrote to the Official Liquidator confirming that they had handed over possession of the securities they held to him.

On 25th November, 1988 the High Court appointed a valuer of the said companys assets and properties. On 29th June, 1989 an order was passed in the winding up petition giving to the Official Liquidator leave to sell the assets and properties of the said company by public auction by inviting sealed tenders upon advertisements once in the The Statesman once in Jugantore and once in Biswamitra as per usual terms and conditions of sale. The sale was to be held on 15th September, 1989 at 2.00 pm in Court. The Official Liquidator was directed to issue the advertisements at least three weeks prior to the sale and to give notice to the valuer asking him to be present on the date of the sale. The Official Liquidator, the secured creditors and the valuer were required to act on a signed copy of the minutes of the order.

On 14th August, 1989 the sale notice was issued. It stated that the sale was of the entire moveable and immovable assets of the said company lying in its factory premises at Ballavpur, Ranigunge, District Burdhaman and moveable assets lying in its registered office at Calcutta. The sale was to be on as is where is and whatever there is basis. The terms and conditions of sale were stated to be available at the office of the Official Liquidator.

Clause (1) of the terms and conditions of sale stated that the sale would be as per inventory on as is where is and whatever there is basis and subject to the confirmation by the Court. Clause (3) stated that the offer made by intending purchasers should be contained in a sealed cover enclosing a bank

draft or pay order equivalent to 10% of the offer. Clause (5) stated that the successful purchaser will have to pay the balance purchase price to the Official Liquidator within a week from the date of sale by the Court either by bank draft or pay order. It is made clear that this would not prevent the Court from fixing any other date for such deposit or extending such time even if such time has expired on such terms and conditions as the court may deem fit. Clause (9) stated that the sale would be subject to such modifications/alterations of terms and conditions of sale as the Honble Court deems fit and proper and the decision of the High Court shall be final.

In pursuance of the advertisement for sale the second respondent made an offer on 14th September, 1989. It is this offer which was accepted and, therefore, its terms are relevant. It stated that the second respondent was interested in the purchase of the entire moveable and immovable assets of the said company with a view to reviving it as an on going paper mill. The second respondent had entered into discussions with existing labour unions and the State Government and had entered into a memorandum of understanding with the labour unions for reopening the paper mill to run it, taking workmen from existing employees. The offer was for the sum of Rs.1,50,00,000/- and bank drafts for the aggregate amount of Rs.15 lakhs were enclosed. The offer stated, If our bid is successful we shall complete the payment of the 25% of the sale value within a fortnight and take the possession. For the balance we shall pray to the Honble High Court, Calcutta to allow us the instalments facility to pay off (balance) amount for which we shall however arrange a bank guarantee to cover the entire sum. We would, therefore, request for a clear order of the Honble High Court transferring the assets of the said company in the usual manner .....

On 15th September, 1989, the judgment and order of sale which was challenged before the Division Bench was passed. The learned Single Judge recorded that the Official Liquidator had received, pursuant to the advertisements, three offers, one of which was by the second respondent for Rs.1,50,00,000/-, the other was only with regard to the sale of furniture and the third was for Rs.1,10,00,000/- for the sale of the assets. The sale of assets had taken place in the open court though there were no further bidders at the auction. The offer of Rs.1,50,00,000/- had been subsequently raised to Rs.2 crores by the second respondent. The Advocate General for the State of West Bengal, appearing for the second respondent, had submitted that the concerned unit would not be disposed off as scrap but would be used as a going concern. An agreement had already been reached with the union affiliated to the CITU containing detailed terms and conditions as to the working of the mill. The Advocate General had produced a letter from the Bengal Paper Mill Mazdoor Congress affiliated to INTUC wherein an unequivocal acceptance of the terms had been recorded. The Advocate General had assured the Court that 1700 people would be re-employed within a span of two weeks and to those who could not be taken in necessary compensation would be paid, which might exceed Rs.50 lakhs. The learned Single Judge recorded that the learned advocate appearing for the secured creditors has raised no objection excepting however that the prayer for direction on the Official Liquidator for disbursement of some money to the secured creditors as a long period of time has already elapsed in the meanwhile. The learned Single Judge then passed the following order:

> Considering the above and considering the factum of re-employment of 1700 people of the Mill which has been under closure for the last 7-8 years, the sale in favour of

M/s. Eastern Minerals & Trading Agency (Paper Division) ought to be confirmed at Rs.2 crores,. It is ordered thus accordingly. consequently directions follow.

It is recorded that a total sum of Rs.20 lakhs has been made over to the Official Liquidator in court today and the Official Liquidator is, therefore, thus directed to make over possession of the Mill premises to the purchaser by tomorrow.

The purchaser is directed to furnish further bank guarantee for a further sum of Rs.30 lakhs by 26th Septemer 1989, which will be kept in deposit with the Official Liquidator. In the event, however, the purchaser fails to furnish such bank guarantee within the time stipulated above, the Official Liquidator is directed to bring it to the notice of this Court on 27th September, 1989 for further orders.

The purchaser is further directed to pay a sum of Rs.30 lakhs to the Official Liquidator as against the purchase price within four weeks from date. Balance 75% of the purchase price, that is, Rs.1.50 crores will be paid by the purchaser by quarterly instalments of Rs.15 lakhs each. The first quarter, however, commencing from 1st January, 1990. In default of payment of a sum of Rs.30 lakhs or any one of the quarterly instalments as above, the Official Liquidator is also directed to apply before this Court for necessary directions.

The secured creditors protested against the statement in the judgment and order that referred to them and the learned Single Judge, on 27th September, 1989, directed that the order dated 15th September 1989 is modified to the extent that the 9th line of the 6th paragraph of the said order, after the words all the secured creditors should be read as has made a prayer. As so modified, the relevant part of the sentence reads: the learned advocate appearing for all the secured creditors has made a prayer for direction on the Official Liquidator for disbursement of some monies to the secured creditors .....

Appeals were filed by the banks against the orders dated 15th September, 1989 and 27th September, 1989. The appeals were disposed off by the order that is under challenge.

The Division Bench noted that the valuation report was not disclosed to any of the banks, but it stated that it appeared from the valuation report produced before it that the total value of the assets of the said company was estimated by the valuer to be Rs.6,22,16,875/- Since the valuation report was not disclosed to the banks, the banks had had no opportunity to object to the valuation made. According to the advocate appearing on behalf of the banks, the proper valuation of the assets should have been much higher; the loans granted by the banks were fully secured and should have been fully recovered if the assets had been sold at a proper price. Since the valuation report was not shown to the banks, the banks had had no opportunity to point out the defects in the valuation report. The said company had 15.2.73 acres of lease-hold

land. This was not taken into consideration by the valuer on the ground that the lease was only upto 14th October, 1992. The valuer had not indicated whether he had examined the lease-deed or whether there was any renewal clause in it. Counsel on behalf of the banks had submitted that no proper effort was made to obtain a fair market price for the property sold. Advertisements should have been given all over India, particularly in Bombay, Delhi, Madras and other important commercial centres, to obtain the best possible price. This had not been done. Because of the non-disclosure of the valuation report, the secured creditors were unable to raise any objection and were not in a position to know whether the assets had been sold at a low price. The assets were the securities of the banks. The banks had filed several suits and receivers had been appointed. The assets could not have been sold without the written consent of the banks and the banks had not agreed to the sale of their securities. The Division Bench found itself unable to uphold the latter contention advanced on behalf of the bank for the banks had participated in the sale from the very beginning. No objection had been raised by the banks to the proposed sale of the assets. The sale was concluded in the presence of the advocates appearing on behalf of the banks. A variation of the learned Single Judges order was made at the instance of the banks. At no point of time did the banks object to the sale of the assets or the price at which the assets were sold. Learned counsel for the banks contended that what was actually sold was the equity of redemption in the secured assets. The Division Bench found that this stand had not been taken by the banks before or at the time when the sale took place. Counsel had contended that the mortgages could be given up only in writing and not otherwise and he had pointed out that the mortgage suits filed by the banks were still pending. The Division Bench was unable to uphold this contention to set aside the sale because in a case like this some sort of promptitude was expected from the banks. No allegations of fraud had been made against the purchaser. The purchaser had purchased the properties in a court sale and had promised to give employment to 1700 workmen of the said company. The purchaser had incurred expenditure for running the factory and for that purpose had entered into contracts with various parties. Another important aspect of the case was that no appeal had been preferred against the order of sale till 3rd February 1990 and no stay of its operation had been asked for. Counsel for the banks had contended that the appeals were filed within the period of limitation. The Division Bench countered that that might be so, but the purchaser had been allowed to take possession after the sale. He had employed persons and placed orders without objection from the banks. It was only after these things had happened that the banks woke up. The delay was found fatal to the case of the banks. But, the Division Bench added :

There is, however, considerable force in the argument of Mr. Mitra that the sale was made with undue haste. The proposal for sale of a large paper mill should only have been effected after giving wide publicity all over India. Moreover, the successful bidders offer should have been examined in depth before acceptance. Some enquiry should have been made to find out the number of workers actually employed by the company in liquidation at the time of the closure of its mills. No attempt was made

out to find out how many of those workers were still unemployed and whether the Trade Union with which the purchaser had entered into an agreement represented all the unemployed workman of the company in liquidation. It appears that 1700 of the workmen of the company have not been re-employed. No attempt was made to find out whether there was any outstanding liabilities of the company, statutory or otherwise, in respect of its workers. The company might have other liabilities. The nature and extent of such liabilities were not found out. The sale of the asse5ts should not have been made in a way to deprive the right of all the creditors, including the banks, to proceed against the assets of the company to realise their dues.

The Division Bench then stated :

However the only parties that have come to this Court for setting aside the sale are the banks who had participated fully at every stage of the sale. The banks were represented at the time when the decision was taken to sell the assets of the company. The banks were also present when the sale was finalised. The banks had also got the matter mentioned for effecting certain corrections in the sale order and a prayer was made for disposal of the sale proceeds. It does not appear that the banks were under any misapprehension that the secured assets were being sold.

The banks had participated in every proceedings which culminated in the sale of the assets and made a prayer for prompt payment out of the sale of the assets. They cannot after a lapse of five months turn around and pray for setting aside the sale on the ground that the banks interests were not properly protected at the time of the sale. .....

In the facts and circumstances of the case and having regard to the conduct of the bank, this application must be dismissed.

It is to be noted that no reserve price for the sale was fixed. Why this should have been so is not understood, particularly having regard to the fact that a valuer had been appointed of the assets and properties and a report obtained. The valuation report was not disclosed. The order of the learned Single Judge does not set out what the valuation of the property that was sold was. It does not even state that, in view of that valuation, the offer of Rs.2 crores made by the second respondent was a fair and adequate price. Further, the learned Single Judge did not notice what the Division Bench did, namely, The Company had 15.2.73 acres of leasehold land. This was not taken into consideration by the valuer on the ground that the lease period was only upto 14th October, 1992. The valuer has not indicated whether he had examined the lease deed or whether there was any renewal clause in the lease agreement. The valuation was, therefore, itself suspect.

The sale was advertised once only in three newspapers, two of which at least were local newspapers. For a sale of the magnitude of that with which we are concerned, this was surely inadequate

publicity. Inadequate publicity necessarily suggests the possibility that a better price could have been obtained.

The learned Single Judge would appear to have been carried away by the prospect that 1700 people would be re-employed. He did not appreciate that the said companys ex-employees were only some of its creditors and that they stood on no better footing than its other unsecured creditors. No order could have been passed that, while it favoured them, took no account of other unsecured creditors. The employees of the said company had been, as the order of the learned Single Judge itself shows, out of employment for 7 to 8 years but the learned Single Judge did not inquire how many of them had secured other employment in the intervening years.

The learned Single Judge did not ascertain and set out what the total amount of the claims, secured and unsecured, against the said company was and whether the assets and the property of the said company, other than those sold, were adequate to pay off these claims, even in part. The learned Single Judge did not even ascertain and state how many unsecured creditors there were, what the aggregate amount of their claims was and what part thereof could be ascribed to the erstwhile employees of the said company. The learned Single Judge did not, it appears, appreciate that his principal obligation in conducting and confirming the sale was to the body of creditors of the said company and that the obligation was to ensure that the best possible price had been procured from whereout they could recover at least some part of their dues.

The learned Single Judge appears not even to have noticed that the offer of the second respondent was not in accordance with the terms and conditions of sale inasmuch as it contemplated a payment schedule that was at variance with the terms and conditions of sale. There is no discussion in the order of the learned Single Judge about why it was thought fit to entertain such an offer.

There was another offer before the learned Single Judge to purchase the assets and properties of the said company for the sum of Rs.1.10 crores. No details of the offer are set out in the order of sale. If it was in accordance with the terms and conditions of sale, it should have been considered and compared to the second respondents offer. This offerer did not, apparently, raise his offer, but he might have done so if he have been told that he could have the same liberal payment terms that the learned Single Judge gave to the second respondent after it had raised its offer. No reason was given by the learned Single Judge in the order of sale as to why he thought it necessary or proper to give to the second respondent these very liberal terms. It is to be noted that these terms are even more liberal than those asked for in the offer.

Though only 10% of the price had been received and there was a direction to furnish a bank guarantee for Rs.30 lakhs 10 days thereafter, and the balance purchase price was to be received only after a very long period of time the learned Single Judge directed the Official Liquidator to hand over to the second respondent the possession of the assets and properties by tomorrow.

The observation of the Division Bench in the order under appeal that the sale was conducted with undue haste is very appropriate. So are the other critical observations that the Division Bench made, which we have quoted above. It could not but have been obvious to the Division Bench, therefore,

that there was every possibility that the sale had not procured the best possible price. Even so, the Division Bench did not interfere with the order of sale, because, in its view, the second respondent had been allowed by the banks to take possession of the assets and properties and to incur expenditure. In our view, the Division Bench was in error.

Upon liquidation, the assets and properties of the company in liquidation vest in the Official Liquidator for the benefit of its creditors. It is only from out of the sale proceeds of these assets and properties that the creditors of the company can hope to recoup their dues. To ensure that the best possible price is realised upon the sale of these assets and properties, the sale thereof by the liquidator is required to be confirmed by the High Court. It is the obligation of the High Court to the creditors of the company in liquidation to make sure that the best possible price has been realised.

In Navalkha & Sons vs. Sri Ramanya Das & Ors., 1970(3) SCR 1, this Court quoted Rule 273 of Companies (Court) Rules, 1959, thus : Procedure at sale. - Every sale shall be held by the Official Liquidator, or, if the Judge shall so direct, by an agent or an auctioneer approved by the Court, and subject to such terms and conditions, if any, as may be approved by the Court. All sales shall be made by public auction or by inviting sealed tenders or in such manner as the Judge may direct.

It then said :

> The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offeror does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be proper exercise of judicial discretion. In Gordhan Das Chuni Lal v. T. Sriman Kanthimathinatha Pillai, A.I.R. 1921 Mad. 286, it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed is the best that could be expected to be offered. That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in Rathnaswami Pillai v. Sadapathi Pillai, A.I.R. 1925 Mad. 318, and S. Soundarajan v. M/s Roshan & Co., A.I.R. 1940 Mad. 42. In A. Subbaraya Mudaliar v. K. Sundarajan, A.I.R. 1951 Mad. 986, it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even

though there is no suggestion of irregularity or fraud.....

It is also well to remember that, for the most part, the creditors of a company in liquidation are small trade creditors whose dues are not so large as would make it economical for them to resort to proceedings in court. It is these small creditors that the High Court is expected to protect when confirming a sale by the liquidator.

We think that the Division Bench lost sight of what is stated above. It could not have realistically expected the ordinary unsecured creditors of the said company to have filed appeals on the ground of inadequacy of the sale price. It could not have turned a blind eye to the many defects that it itself noted in the order of sale merely because the banks had moved the appeals after five months; nor was there any justification for taking into consideration the expenditure that had been incurred by the second respondent subsequent to its possession of the assets and properties. In the first place, the Division Bench should have noted that the learned Single Judge had with unseemly haste ordered possession thereof to be handed over to the second respondent on the very next day. In the second place, the appeals had been filed within the period of limitation. Expenditure incurred during this period could not render the appeals, in effect, infructuous. The same would apply to expenditure incurred subsequent to the filing of the appeals and until the time that they were heard. The second respondent knew that the appeals were pending and that they could end in the order of sale being set aside. Such expenditure as it incurred with this knowledge was at its risk. In the third place, and most important, the interests of the creditors of the company, particularly the unsecured creditors, overweighed such equities, if any, as might have been considered to be in favour of the second respondent. It was, in our view, the obligation of the Division Bench to have struck down the order of sale, having regard to what it found wrong with it.

It was contended on behalf of the second respondent, the State of West Bengal and the employees that, whatever we might think of the order of sale, we should not interfere. For the reasons that we have stated, we cannot agree. The interests of the creditors of the said company are paramount, as is the obligation of the Court to them. That the second respondent has incurred expenditure and obligations, which were detailed, subsequent to the passing of the order of sale and upto date cannot, in the circumstances, deter us from setting aside the order of sale. The second respondent knew that the appeals were pending. It should have appreciated that the order of sale was very vulnerable, given what the Division Bench of the High Court had to say about it. It consciously took the risk of incurring the expenditure and obligations and it cannot take shelter behind them.

It was submitted by learned counsel for the second respondent that we should vary the terms upon which the offer of the second respondent was accepted to overcome the prejudice to the said companys creditors. We have no materials upon which we can do so, apart from the fact that to do so would be wrong in principle. We do not

know and have no means of knowing what the fair value of the said assets and properties that were sold was; that could only have found after a properly advertised sale had been held. We do not know, and counsel were unable to tell us, what the totality of the claims against the said company are.

Learned counsel for the banks had contended before the Division Bench of the High Court that the mortgages could only have given up by the banks in writing and not otherwise and he had pointed out that the mortgage suits by the banks were still pending. He had also contended that what was sold to the second respondent, in any event, was only the equity of redemption in the mortgaged property. These contentions were repeated before us. On behalf of the second respondent it was contended, on the other hand, that the banks had given up their securities and become unsecured creditors.

It is to be noted that on 11th-12th January, 1988, the Punjab National Bank had made an application to the High Court in the transferred suit and prayed that the Official Liquidator should be appointed receiver in place and stead of the joint receivers in Suit No.738 of 1986 with directions to take possession, make inventory and sell the securities both in the transferred suit as well as in Suit No.738 of 1986, which application was allowed on 12th January, 1988. It is not clear from the submissions whether, as a result, the Official Liquidator was appointed receiver of the mortgaged properties in the transferred suit. It is also not clear whether any similar application had been made by the other banks in their suits. It is pertinent to note that in the subsequent order dated 29th June, 1989 passed in the winding up petition, giving to the Official Liquidator leave to sell the assets and properties of the said company, reference was made to the secured creditors. Similar reference was made to the secured creditors in the order of sale. There is also some substance in the contention based on the fact that the mortgage suits were pending when the order of sale was made and that the mortgage securities could not ordinarily have been held to have been given up without express writing to this effect. On the other hand, it needs to be pointed out that it appears that the banks did not at any time prior to the order of sale require that the sale proceeds, insofar as they related to properties secured in their favour, should be kept apart to the credit of their suits. It is, therefore, a moot question as to whether the banks had given up their securities before the order of sale, but we cannot resolve the question in the absence of the full record for this was a question that arose incidentally in the appeals from the order of sale. We think that this is a question that has now to be left to be answered by the High Court on appropriate applications by the banks.

At the same time, it is perfectly clear to us that it was not the equity of redemption alone in the secured properties that was sold for, had that been so, there should have been express mention to that effect in the terms and conditions of sale.

In an additional affidavit filed on behalf of the second respondent before this Court it is stated that the said company had shown no interest in renewing the lease of the property which was the subject matter of the sale and that in order to continue to lawfully remain in possession to run the paper mill, the Bengal Paper Mills (1989) Co. Ltd., floated by the second respondent and its associates, had obtained the lease in its favour from the State of West Bengal. The order of sale in favour of the second respondent being liable to be set aside, everything consequential thereon must necessarily also be set aside. The lease, patently, was obtained as a consequence of the order of sale. For doing complete justice, therefore, it is necessary to set aside the lease.

Learned counsel for the second respondent submitted that the second respondent would be entitled to recover the sale price as also all expenditure that it had incurred consequent upon the order of sale. We are in no doubt that the Official Liquidator must refund to the second respondent the sum of Rs.2 crores. As to any other expenditure, the second respondent must apply to the High Court and satisfy it, first, that it was incurred and, secondly, that, in law, the second respondent is entitled to recover it.

The appeals are allowed. The judgment and order under appeal is set aside as also the order of sale dated 15th September, 1989 in favour of the second respondent. The Official Liquidator shall forthwith recover possession, from whoever is in possession, of the assets and properties covered by the said order of sale. The same shall be resold after a fresh valuation report thereof has been obtained, a reserve bid fixed and due advertisements published. The second respondent shall be repaid the purchase price of Rs.2 crores by the Official Liquidator subsequent to recovery of possession as aforestated.

The lease of the property, which was the subject matter of the sale, in favour of the Bengal Paper Mills (1989) Co. Ltd., is set aside.

The second respondent shall pay to the Official Liquidator the costs of the appeals before the Division Bench of the High Court and of these appeals, quantified in the sum of Rs.25000/-.