



## **HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

### **BEFORE ADJUDICATING OFFICER**

**EXECUTION NO. 113 OF 2020**

**IN**

**COMPLAINT NO. 324 OF 2018**

Anil Kumar

....DECREE HOLDER

**VERSUS**

SRS Real Infrastructure Pvt Ltd

....JUDGMENT DEBTOR

**Date of Hearing: 24.04.2025**

**Hearing: 20th**

**Present: -**

Mr. Vinod Kumar, on behalf of Mr. Anil Kumar, Decree holder through VC.

Mr. Anuj Chauhan, Advocate, for Interim Resolution Professional through VC.

Mr. Rahul Boora, Naib Tehsildar, Meham, for District Collector, Rohtak, through VC.

### **ORDER**

This order of mine will dispose of an application dated 06.05.2024 filed on behalf of the decree holder whereby he has sought issuance of directions to the District Collector, Rohtak and Tehsildar, Meham, to comply with order dated 29.11.2022 of the Hon'ble HRERA, Authority passed in the present execution petition.

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2. The facts in brief are that the applicant/decreed holder had filed a complaint under Section 31 bearing no.324 of 2018 on dated 13.07.2018, which was allowed on 04.12.2018. In the said order the decreed holder was awarded refund along with interest in the following manner;

*“6 (i) The complainants deserve refund of the amount paid by them. Hence, the respondent company is directed to refund the entire amount paid by the complainants in the above captioned complaints to the complainants along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017. Respondent company shall pay the entire amount within 60 days in two equal installments of which first instalment will be paid within 30 days and the next within 30 days thereafter. The period of paying such installments will start from the day the order is uploaded on the website of the Authority.”*

In continuation thereto, an execution petition was filed by the decreed holder on dated 29.01.2020, wherein a recovery certificate was issued vide order dated 20.04.2021 to the District Collector, Rohtak, with directions to recover the decretal amount through the auction of the attached property of the judgment debtor, in response thereto an auction took place on dated 10.01.2022 and thereafter second auction was ordered for dated 31.10.2022.

It is pertinent to mention here that during the execution proceedings on the application of the decreed holder, Hon'ble Authority passed a detailed order on dated 29.11.2022 directing the District Collector,

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Rohtak, to return the amount of the auction done on dated 10.01.2022, to the decree holder within 15 days of communication. The relevant paragraphs 9, 10 and 11 for ready reference are reproduced below;

*"9. Decree Holder, Mr. Vinod Kumar apprised the Authority that the auction proceedings have already been concluded in January 2022 and the amount so recovered has been lying with District Collector, Rohtak. He requested that direction be given to District Collector, Rohtak to disburse the amount so that the same may be remitted to him.*

*10. After considering above facts and submissions by decree holder and IRP and the documents placed on record, the Authority observed that the recovery certificate was issued by the Authority vide orders dated 15.09.2020. In compliance of the orders of the Authority, auction proceedings were conducted to release the decretal amount as arrears of land revenue, intimation regarding which was sent to Authority on 15.02.2022. It is further observed that the moment auction proceedings were conducted, the amount so recovered thereupon belongs to decree holders (to the extent of the amounts as mentioned in the decree). Considering the fact that moratorium has been invoked against judgment debtor company by Hon'ble NCLT, nevertheless the decretal amounts lying in the custody of District Administration is the property of decree holders and not judgement debtor company. Therefore, the Authority is well within its jurisdiction to pass necessary directions for disbursal of decretal amounts. However, if any amount remains in excess after the satisfaction of the decree, in*

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*complaint no. 546 of 2019 and 113 of 2020, the same shall belong to the judgment debtor company.*

*11. In view of the above, a reminder be sent to District Collector, Rohtak to ensure compliance of the orders of Authority in a time bound manner and to supervise and oversee those decretal amounts of ₹66,32,778/- in execution petition no. 546 of 2019 and ₹56,36,187/- in execution petition no.113 of 2020 respectively are disbursed to the Authority within 15 days of communication of these orders. In case of non-compliance of these orders, Tehsildar, Meham is directed to personally appear before Authority to explain why stringent action not be initiated as per provisions of law for noncompliance of the orders of the Authority."*

Before proceeding further, it is pertinent to mention here that Hon'ble NCLT at Chandigarh, had issued a moratorium against the judgment debtor on dated 16.08.2022.

3. By relying upon the directions passed by Hon'ble Authority in its order dated 29.11.2022 to the District Collector, Rohtak, to release the amount of auction to the decree holder to the extent of the amount as mentioned in the decree as it belongs to the decree holder, the decree holder has moved the present detailed application seeking direction for release of the amount from the custody of District Administration, Rohtak.

In support of the contents of application, Sh. Vinod Kumar, appearing on behalf of the decree holder, Sh. Anil Kumar, has argued that

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once the auction conducted on dated 10.01.2022 of the property of the judgment debtor was completed and the amount of the auction was received by the District Administration and the said auction did not require any confirmation from the superior authority as per Annexure 2 with application and that the said auction amount was received by the Administrative Authority before declaration of the moratorium, the District Collector and Tehsildar concerned had no authority to withhold such amount but to give the same to the decree holder to satisfy, order under execution in respect of which, recovery certificate was issued. He has further argued that since the auction dated 10.01.2022 was successfully conducted in accordance with law in favour of the successful auction purchaser, Sh. Nirbhay Singh, who had not only paid the earnest money of ₹37,00,000/- but is still ready to pay the remaining amount of auction, so direction be passed to let the successful auctioneer to pay the remaining amount, so that the decree holder is handed over complete auction amount of ₹1,48,00,000/-. While referring to the affidavit filed by Sh. Nirbhay Singh, in CWP no. 7786 of 2023 at Page 141 to 144 of the application, he has argued that Sh. Nirbhay Singh had approached Hon'ble High Court to get an order to pay the remaining amount and to say that Sh. Nirbhay Singh was forced to sign on the documents showing receipt of the earnest amount paid, he has drawn attention of this Forum to the Affidavit dated 21.04.2023 filed in the said CWP.

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In support of his arguments, he has further argued that the IRP has no authority to execution of order dated 29.11.2022 because such order was never challenged by it before the appropriate Forum of law, thus legally intact and this Forum in execution has no option but to give effect to such order, it being legally intact. He has also argued that he is entitled to get interest on delayed payment till realisation of the full amount as per provisions of Section 18 and Section 2(za) of the Act, 2016 and the Rules 15 & 16 of the Rules, 2017. He has also referred to the law laid down by Hon'ble Apex Court in "Valji Khimji and Company vs Official Liquidator of Hindustan Nitro Product(Gujrat) Ltd. and Ors., (2008) 9 SCC 299", wherein it is held that an auction is complete on the fall of the hammer where no confirmation from any authority is required, as is the case under consideration, in view of letter dated 01.04.2022 of the office of Divisional Commissioner, Rohtak (Annexure-II). To say that any action taken against the judgment debtor before initiation of moratorium particularly when the property of the judgment debtor was sold in auction before declaration of the moratorium cannot be treated as an asset of corporate debtor, as the case in hand is. To say so, he has relied upon the law laid down by Hon'ble Apex Court in "Haldiram Incorporation Pvt. Ltd. vs Amrit Hatcherics Pvt. Ltd. (Civil Appeal no. 1733 of 2022)", by Hon'ble Bombay High Court in "Reliance Communication Ltd. vs Rajendra P. Bansal (IA No. 1161 of 2020

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in First Appeal No.1539 of 2012)" dated 04.01.2023. Finally, he has prayed to allow the application in the manner prayed for by issuing directions.

4. Learned counsel for the IRP appointed in insolvency proceedings against the judgment debtor i.e. SRS Real Infrastructure Ltd. bearing CP(IB) No.266/Chd/Hry/2020, dated 16.08.2022, has also filed a detailed reply to counter the claim of the decree holder. In support of his contentions, he has argued that order of declaration of moratorium, in this case, on dated 16.08.2022, has been upheld by Hon'ble High Court vide order dated 22.07.2024 in Contempt Petition no.778 of 2023 filed by the decree holder. He has further argued that in this case, the auction conducted on dated 10.01.2022 by the office of Deputy Collector, Rohtak, was never completed as the auction bidder namely Sh. Nirbhay Singh, had though deposited an initial amount of ₹37,00,000/- as 25% of the total amount of auction bid but the said auction was never completed for want of confirmation and finally cancelled, resulting into return of the amount so deposited to the auction bidder with interest. He has further argued that the attempts made by the auction bidder to get the auction proceeds completed even did not find favour on the judicial side up to our Hon'ble High Court. He has further argued that the decree holder had misled the Hon'ble Authority on dated 29.11.2022, by giving an impression that auction proceeds were successfully completed which is the reason the observation of

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Hon'ble Authority are there in the said order but otherwise contrary to the facts on record, as when the District Administration had no amount concerning the auction dated 10.01.2022 payable, how could the decree holder be given any amount by the Administration in compliance of order dated 29.11.2022. He has further argued that under the orders of the competent Administrative Authority, a second auction was ordered for dated 31.10.2022 after cancellation of first one but the said auction was also not completed because of the moratorium issue, as is evident from the information provided by the revenue authority vide its letter no.106/TRA dated 17.04.2023 addressed to Hon'ble HRERA at Panchkula, which forms part of the file of this execution. He has further argued that in the case in hand, the decree holder knowing fully well had approached the IRP to raise claim against the judgment debtor, which amount is also subject matter of the present execution but after one year or so, he withdrew it through mail dated 17.02.2024 and now can't approach IRP again to claim such money, nor, this forum can proceed till CIRP proceedings are in action.

He has further argued that law so relied by the decree holder to support his arguments, is not applicable in the case in hand, wherein the first auction was never completed for want of legal formalities and the second auction never took place because of the moratorium. Finally, he has prayed that the applicant/decreed holder has no right to continue with the present execution to claim as only remedy available with the decree holder was to

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approach the IRP to raise the claim before it which it availed but finally withdrew. Hence, the present execution be disposed of as this Forum in execution has no authority to grant relief to the decree holder till order under Section 14 of the Insolvency and Bankruptcy Code is in existence against the judgment debtor.

In addition to the above, he has also argued that this Forum can not direct the Administrative Authority to allow the unsuccessful auction bidder namely Sh. Nirbhay Singh, to complete the auction dated 10.01.2022 by paying the remaining amount, who otherwise has already lost his chance on the judicial side. In brief, he has prayed for dismissal of the application and to dispose of the execution as its continuity would be a futile exercise till CIRP proceedings are in voyage.

5. Mr. Rahul Boora, Naib Tehsildar, Meham, appearing on behalf of District Collector, Rohtak, has stated that since the first auction was not completed, the earnest money, collected from Sh. Nirbhay Singh, auction bidder, was returned back on dated 05.08.2022 i.e., prior to order dated 29.11.2022 passed by Hon'ble Authority and second auction was not conducted due to issue of moratorium declared by Hon'ble NCLT, Chandigarh, the present application deserves rejection.

6. With due regards to the rival contentions and facts on record, before this Forum in execution decides the merits in the requests made in the

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application dated 06.05.2024, it intends to bring on record certain admitted or proven facts;

- (i) That, vide order dated 04.12.2028, Hon'ble Authority had granted relief of refund with interest to the decree holder;
- (ii) That, the Hon'ble Authority had issued recovery certificate vide order dated 20.04.2021 to the District Collector, Rohtak, for recovery of the decretal amount;
- (iii) That, in execution of the said recovery certificate, auction proceedings were conducted on dated 10.01.2022, in which Sh. Nirbhay Singh, being the successful bidder, had deposited 25% of the total amount of bid i.e. ₹37,00,000/-;
- (iv) That, a request was made by the District Administration to the HRERA, Authority at Panchkula, vide its letter no. 480/DRA dated 13.04.2022, for confirmation of the bid but the said bid letter was replied by letter no. HRERA-PKL/ED/2022/7321-22 dated 11.05.2022, in brief stating therein that;

*“ Authority has received Memo No. 480/DRA dated 13.04.2022 from the Collector, Rohtak intimating that the auction proceedings have been completed by Tehsildar Meham. After that the case was sent to the Commissioner, Rohtak Division, Rohtak for confirmation of auction. Commissioner, Rohtak Division, Rohtak has remanded the case with the remarks that*

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*the orders of auction/ attachment were passed by Hon'ble Court of The Haryana Real Estate Regulatory Authority, Panchkula, the confirmation of auction would also be made by that Hon'ble Court. The Collector, Rohtak has requested the Authority to confirm the auction proceedings, so that further action could be taken and successful bidder is directed to deposit the remaining amount for remitting to this Authority.*

*2. Authority observes that after any amount is ordered to be recovered as arrears of land revenue by a competent court, recovery of the amount so ordered has to be done by district collector in accordance with procedures prescribed by*

*Revenue Department. The court of competent jurisdiction including authorities like RERA, cannot guide the District collector about the process to be adopted by him.*

*Court has no knowledge of fair market price of a property being auctioned for recovery of decretal amounts as arrears of land revenue.*

*Under Land Revenue Act/ relevant rules and instructions all such powers have been conferred upon the Collector of a district. The Authority understands that such powers are exercised in the capacity of a quasi-judicial authority.*

*Reference made under Section 92 of Land Revenue Act, is in the nature of an appeal against decision of the Collector before Divisional Commissioner. Authority further understands that quasi-judicial authorities, which is Collector in this case, have to be guided by principles of Rule of law, equity and fairness.*

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3. Authority, therefore, observes that it cannot guide the discretion of the District Collector. The District Collector has to decide the matter entirely at its own level and follow the norms of fairness and transparency."»

*Authority resolves to authorise its Executive Director to send a copy of this resolution to the District Collector, Rohtak for necessary action at his level."*

(v) That, the perusal of letter no. RA/2526 dated 01.04.2022 attached with application of the decree holder under consideration (Annexure II), indicates that it nowhere says that no confirmation of sale is required from competent authority, as otherwise claimed by the decree holder in his application. Rather, as per record of the file, there is correspondence from Commissioner, Rohtak Division, Rohtak, to Deputy Commissioner, Rohtak no. RA/3963 dated 06.06.2022, wherein the Deputy Collector was directed to "follow" the HRERA order and decide the fairness, equity and rule of law, like Section 81, 82, fair price etc. followed or not, at own level. If Section 81, 82, fair price, equity fairness, rule of law is not followed as per satisfaction of District Collector, then re-auction process should be ordered by the District Collector afresh."

(vi) That, the auction dated 10.01.2022 was cancelled because of non-receipt of confirmation, so second auction was ordered to be held on dated 31.10.2022;

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(vii) That, the successful bidder namely Sh. Nirbhay Singh, was returned the amount deposited i.e. 25% of the total bid amount because of cancellation of auction dated 10.01.2022 due to non-confirmation and thereafter Sh. Nirbhay Singh, could not succeed in making the payment of the remaining amount of auction even after having approached the judicial Forums to allow him to do the same. The receipt of the amount dated 05.08.2022 forms part of the record;

(viii) That, Sh. Nirbhay Singh, had given an affidavit which is referred to by decree holder to challenge the veracity of receipt of the earnest amount, in CWP no. 7786 of 2023 filed, but the said CWP was allowed to be withdrawn with following observations;

*"2. On 17.04.2023, this Court was pleased to pass the following order: -*

*"Learned State counsel, on instructions from Madan, Tehsildar, Meham, District Rohtak, has submitted that in the present case, the auction was subject to the approval of the competent authority and the competent authority has not given any approval and the petitioner had even moved an application for withdrawal of the part-sale consideration amount alongwith interest and on the said basis, the amount has been refunded to the petitioner and the petitioner has even acknowledged the same and thus is estopped from filing the present writ petition. It is further submitted that the said facts have not been mentioned in the present writ petition.*

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*A perusal of page 58 would also show that there is an issue regarding the fair price with respect to the property in question.*

*Learned counsel for the petitioner prays for an adjournment to get instructions in the matter. Adjourned to 25.04.2023.*

3. *Learned counsel for the petitioner seeks to withdraw the present writ petition with liberty to file a fresh petition after giving full and better particulars.*

4. *In view of the above statement of learned counsel for the petitioner, the present writ petition is dismissed as withdrawn, with the aforesaid liberty.*

5. *Pending application, if any, stands disposed of in view of the above."*

It means, self serving affidavit of Sh. Nirbhay Singh, can't be considered as the finally said legal process was withdrawn without having findings on merit. It is not out of place to mention here that two subsequent petitions filed by Sh. Nirbhay Singh before Hon'ble High Court, also could not get any fruitful result for him in respect of his prayer to be allowed to complete the auction process;

(ix) That, on dated 29.11.2022, Hon'ble Authority had passed directions to the District Collector, Rohtak, to release the amount received from the auction dated 10.01.2022 believing that there was a successful auction and

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that amount so received from the bidder was in the custody of the District Administration;

(x) That, vide order dated 16.08.2022, Hon'ble NCLT at Chandigarh, had declared moratorium against the judgment debtor;

(xi) That, second auction dated 30.10.2022 could not take place because of the declaration of moratorium;

(xii) That, it cannot be disputed that it is when first auction was found fault with subsequent auction had taken place;

(xiii) That, there is also no denial to the legal proposition that if payable amount by the judgment debtor is recovered by a competent authority to disburse it to the decree holder to satisfy a decree, before declaration of moratorium, such declaration would not adversely affect the right of the decree holder to get the said amount.

(xiv) That, there can also not be denial to the legal factum that on declaration of moratorium, the conditions imposed in such order in respect of the judgment debtor cannot be ignored by any Forum which includes bar on filing of suit or recovery of decretal amount against such judgment debtor etc.

7. With above described facts on record and also the admitted legal position in mind, now it is to be seen by this Forum in execution

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whether there is any merit in the claim of the decree holder that the auction dated 10.01.2022 was completed successfully, entitling him to get the amount in the manner he has claimed?

The answer to this question is in negative.

At the outset, it is pertinent to mention here that when the decree holder himself is praying to allow Mr. Nirbhay Singh, successful bidder, to pay the remaining amount of auction, the decree holder himself is admitting that auction proceedings were never completed because an auction process is only completed once entire formalities related thereto from the date of auction till entire bid amount paid after confirmation of sale, where needed, are completed in accordance with law. Mere payment of earnest money deposit (EMD) ipso facto would not make the auction process completed on the part of the successful bidder as the same would be completed only when he deposits the entire amount to claim that auction bid has finally been released in his favour giving him his right over the item for which he had bid for. In addition thereto, where there is requirement of confirmation of sale through auction, it is a condition precedent for the bidder to make the remaining payment after confirmation of the sale. Since, in the case in hand, the auction was never completed, rather was aborted resulting into order of subsequent auction and return of the earnest money to the successful bidder, the claim of the decree holder made before Hon'ble

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Authority on dated 29.11.2022 regarding auction bid completed successfully was a misleading statement, resulting into passing of the directions so passed which actually had become non-executable as such on that date because on dated 29.11.2022, the District Administration had no money left concerning such bid, to give it to the decree holder as had already returned to the bidder on dated 05.08.2022. Here, this forum would like to mention that as per settled proposition of law an order passed by competent authority on the basis of wrong facts provided by the party concerned to get the relief, is non-executable, more so when the relief got as such can't be given effect of, as the case in hand is.

It is not out of place to mention here that whether such return of money was legal or otherwise is not an issue to be dealt by this Forum, nor, it can decide about legality of the order of cancellation of first auction, so reference to an affidavit of Sh. Nirbhay Singh, by the decree holder, is of no help more so when Sh. Nirbhay Singh, did not get any favourable order till date from Higher Judicial Forums.

Further, the auction proceedings had also remained incomplete in this case because the issue of grant of confirmation to such auction had remained unsettled between the Commissioner, Rohtak Division and the Deputy Commissioner, Rohtak, so, claim of the decree holder that in this case, no confirmation was required is factually and legally incorrect. Rather,

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in this case, the Commissioner, Rohtak had asked the Deputy Collector, Rohtak, to clear the issue of confirmation or otherwise order for re-auction and finally the later course was adopted. It means, the second auction was ordered when the first one was found incomplete or against the spirit of law, so there remains no question of handing over the amount of earnest money to the decree holder as the first auction was never legally accepted.

Further, the decree holder has raised a legal question to the effect that once order dated 29.11.2022 was not legally challenged in appeal by the IRP, thus, it is legally intact to be executed by this Forum. On this count, this Forum simply holds that there was no requirement on the part of the IRP or the District Administration to challenge it in appeal, because the said order was got passed on the basis of wrong information provided. Had at that time Hon'ble Authority was apprised of the release of amount to Sh. Nirbhay Singh, the Hon'ble Authority would not have had passed an order which was non-executable at that time, as otherwise is finally held today.

8. With above observations, it is concluded that the prayer of the decree holder to direct the Deputy Collector, Rohtak, to give him the amount of auction received, is a prayer which has no legal base and he cannot take benefit of the observation of Hon'ble Authority made in its order dated 29.11.2022, as he had got such order by misleading Hon'ble Authority to believe that the amount so recovered through auction was lying with the

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District Collector, Rohtak, whereas the amount so received was already returned to the bidder on 05.08.2022 much prior to passing of order dated 29.11.2022, because of non-completion of legal formalities required for a successful auction.

Thus, application deserves to be dismissed in respect of this prayer.

9. Before proceeding further, it is apt to note here that because of declaration of moratorium against the judgment debtor on dated 16.08.2022, and in turn because of the bar provided under Section 14 of Insolvency and Bankruptcy Code, 2016, no order of recovery could have been made against the judgment debtor in the present execution petition after 16.08.2022, so it was for the decree holder to approach the Interim Resolution Professional to seek the claim of the amount due, which legal remedy he availed but did not let it complete as had withdrawn such claim on various grounds. The relevant portion of Annexure 6 i.e. mail relied by decree holder, is reproduced below;

**From Decree Holder to IRP:**

"In view of my ongoing COCP-778 of 2023 before Honourable High Court of Punjab and Haryana, Chandigarh, I would again like to reiterate and request one more time that you should take immediate action in considering my claim as withdrawn and immediately remove my name from the list of members of the Committee of Creditors. It is again highlighted that corporate

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debtor is not a party in my filed case COCP No. 778 of 2023 and details of parties are mentioned in attached Annexure-1"

**From IRP to Decree Holder:**

"Please be informed that once you confirm for withdrawal of claim, you shall not claim the outstanding dues before any other authority or Forums till the ongoing CRP process of the CD as the IBC laws have overriding effect on the other laws for the time being in force."

It is pertinent to mention here that the COCP no. 778 of 2023 stands dismissed on dated 22.07.2024.

10. Another request of the decree holder that Sh. Nirbhay Singh, bidder be allowed to pay the balance amount of the auction bid, is not an issue which this Forum in execution could entertain more so when Sh. Nirbhay Singh did not get any relief on this count from any judicial Forum and also because he had forfeited his right to pay the balance amount after having received the refund of earnest money deposited.

11. The decree holder has quoted the law to support his argument but having due regards to the same, benefit of such golden principles laid, is not available to the decree holder in this case wherein the auction process was not successfully completed resulting into refund of the earnest money of the bidder and issuance of order of second auction and also because the order dated 29.11.2022 was as such an in-executable order.

12. In view of the foregoing discussion, it is concluded that application moved on behalf of the decree holder is devoid of merits on all



counts, thus stands dismissed. However, his right to claim refund with interest under the order under execution would still remain intact including the interest on delayed payment minus the period legally exempted, against the judgment debtor. However, such right is subject to the outcome of CIRP proceedings which are in existence since 16.08.2022. He may again prefer his claim before IRP, if so legally permissible because till CIRP proceedings are in existence, this Forum in execution can't execute the order under execution, nor it is worth to continue with this execution for any uncertain period.

In the given circumstances, the present execution is disposed of with liberty to the decree holder to approach this Forum by filing afresh, provided he has justified cause to file it again on completion of CIRP proceedings, or, otherwise, has order of any Hon'ble Higher Judicial Forum to let him file afresh.

Let, file be consigned to the record room after uploading the order on the website of the Authority.



**MAJOR PHALIT SHARMA**

**ADSJ (Retd.)**

**ADJUDICATING OFFICER**

**24.04.2025**

Narinder Kaur  
(Law Associate)