

(7) We are further of the view that the absence of the petitioner was not without any willful excuse because his brother in law was seriously ill who eventually died. It has further come on record that the petitioner was not the only document writer and there were others to look after the need of the public. Therefore, we are of the considered view that the order dated 12th May, 2002 (Annexure P.1) passed by the Registrar-cum-Deputy Commissioner and order dated 17th September, 2007 (Annexure P.7) passed by the Financial Commissioner are liable to be set aside.

(8) For the reasons afore-mentioned this petition succeeds. The impugned orders dated 12th May, 2002 (Annexure P.1) and order dated 17th September, 2007 (Annexure P.7) are set aside. The respondents are directed to restore the Deed Writers licence of the petitioner forthwith. The petitioner is entitled to costs which is quantified at Rs. 2,500.

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**R.N.R.**

*Before Permod Kohli, J.*

**NARINDER KUMAR JAIN,—Applicant**

**versus**

**M/S DOMINO LEATHERS LTD. (IN LIQUIDATION)  
THROUGH THE OFFICIAL LIQUIDATOR,—Respondent**

C.A. No. 690 of 2007 in

C.A. 305 of 2006

and C.A. No. 691 of 2007 in

C.A. 304 of 2006

22nd February, 2008

*Company (Court) Rules, 1959—Rl. 9—Confirmation of sale in favour of highest bidders—Refund of earnest money to unsuccessful bidders—Claim for interest on amount of earnest money—Conditions 3 & 13 provide that participants will not be entitled to interest on amount of earnest money in event their bid*

*is not accepted—Applicants accepting refund of their amount without claiming any interest—Applications dismissed being without merit.*

*Held*, that conditions 3 and 13 sufficiently conveyed to all the participant bidders that they will not be entitled to interest on the amount of earnest money in the event their bid is not accepted or is set aside at any stage. Knowingfully well such conditions, the applicants participated in the bid and deposited the earnest money. Even when the orders dated 26th July, 2007 and 2nd August, 2007 came to be passed by this Court, no such claim was ever projected, rather the applicants accepted the refund of their amount without claiming any interest. There is nothing on record to show that at the time amount of earnest money was ordered to be refunded, the applicants lodged claim for interest or not. If they did not lodge any such claim, it is deemed to be waived/abandoned and if they lodged any claim but not awarded, it is deemed to be rejected. In the given situations, they cannot claim interest. The present applications are after thought.

(Para 8)

Vijay Sharma, Advocate for applicant(s)

Anil K. Aggarwal, Advocate for Official Liquidator

***PERMOD KOHLI, J***

(1) This order will dispose of CA Nos. 690 of 2007 in CA No. 305 of 2006 and CA No. 691 of 2007 in CA No. 304 of 2006, as both the applications involve similar questions of law and facts.

(2) The applicants have filed the present applications seeking direction to the Official Liquidator for payment of interest on the amount of earnest money of Rs. 45,10,000 in CA No. 691/2007 and Rs. 45,00,000 in CA No. 691 of 2007 for the period the amount remained with the Official Liquidator i.e. from 27th February, 2006 to 10th August, 2007.

(3) Pursuant to the order dated 12th January, 2006 passed by this Court in Company Application No. 939/2005 in Company Petition No. 50 of 1999, a sale notice was published in the Tribune (Chandigarh Edition), Dainik Bhaskar (Chandigarh Edition), Ajit (Jalandhar Edition),

Amar Ujala (Kanpur), Economic Times (Mumbai and Delhi Edition) and Thanti (Chennai) on 25th January, 2006 for the sale of the assets/properties of M/s Domino Leathers Limited (in liquidation). The applicants also submitted their offers and deposited the earnest money as noticed here-in-above. The Official Liquidator applied for confirmation of the sale. In the meantime, other bidders also came forward and offered higher amount. Ultimately, the bid was finalised for Rs. 4.30 crores in favour of M/s Chaudhary & Sons Forgings Private Limited in respect to Lot No. IV and for Rs. 3.55 crores in favour of T.H. Estate Private Limited in respect of Lot No. VII (composite Lot Nos. V and VI) and the amount of earnest money deposited by the applicants was refunded to them on 10th August, 2007.

(4) The Official Liquidator has opposed the payment of interest. Admittedly, the sale notice was issued by the Official Liquidator containing following stipulations :-

“3. The earnest money deposit given for participating in the auction sale will be returned to the respective bidder by the Official Liquidator in the event of his offer not being accepted. No interest shall be payable on earnest money.

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XXX

13. In case the sale is not confirmed or is set aside on any ground whatsoever the purchaser shall be entitled to refund of his deposit or earnest money as the case may be without interest and shall not be entitled to be paid his costs, charges and expenses occasioned by his bid for the sale property not being declared any purchaser thereof and incidental to the sale nor shall be entitled to any compensation or damages whatsoever.”

(5) It is also admitted that the sale was confirmed in favour of the highest bidders who offered much more amount than the applicants. While accepting the highest bids, *vide* order dated 26th July, 2007 and dated 2nd August, 2007, direction for refund of the earnest money paid by unsuccessful bidders including applicants in these applications also came to be passed. In both these orders, there was no direction for payment of interest.

(6) Learned counsel for the applicants has relied upon the case of **The Industrial Credit and Investment Corporation of India Ltd. and others** *versus* **The Official Liquidator, H.C. Calcutta and another (1)**, wherein the Hon'ble the Supreme Court, while setting aside the sale and ordering re-sale of the property of the Company in liquidation, has observed as under :-

“6....As a consequence of the directions made by us, the deposits made by Laxmi Petrochem and Hooghly Mills with the Official Liquidator at Calcutta shall be refunded to them, with accretions thereto, if any. We may also observe that Laxmi Petrochem as well as Hooghly Mills would be entitled to participate in the sale to be held hereafter on the same terms and conditions as applicable to all others.”

(7) Learned counsel for the applicants has also relied upon the case of **Commissioner of Sales Tax, U.P. versus Gouti Bandhu, Aligarh and others (2)**, wherein it has been observed as under :-

“6. Shri Ganguli may be right in his contention that the appellant having deposited the money, should be suitably compensated and no direction has been given by the Division Bench in that behalf. In the event of any subsisting liability against the estate of respondents 2 and 3, to discharge any debts, it may be open to the official assignee to bring such part of the properties which may be sufficient to discharge the liability, to sale by public auction either by inviting tenders or through appropriate procedure under Order 21 of the CPC and then to conduct the sale in accordance therewith. In case the official assignee has kept Rs. 77,500 in any interest-earning security, the principal amount together with interest is directed to be refunded to the appellant. In case the amount was not kept in any deposit and was used to

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(1) AIR 1994 S.C. 167

(2) (1997)11 S.C.C. 274

discharge outstanding debt due by respondents 2 and 3, the appellant is entitled to get interest at 18% per annum on the amount deposited by the appellant and the sale should be so conducted keeping in view the interest liability. From the amount secured by sale, apart from discharging the liabilities fastened on the lands, the interest also should be repaid to the appellant from the date of the deposit till date of repayment to the appellant.”

(8) No doubt in both the aforesaid judgments, the Hon'ble Supreme Court directed the refund of money with interest. However, in none of these cases, there was any stipulation in the sale/auction notice like in the present case. Conditions 3 and 13 sufficiently conveyed to all the participant bidders that they will not be entitled to interest on the amount of earnest money in the event their bid is not accepted or is set aside at any stage. Knowing fully well such conditions, the applicants participated in the bid and deposited the earnest money. Even when the orders dated 26th July, 2007 and 2nd August, 2007 came to be passed by this Court, no such claim was ever projected, rather the applicants accepted the refund of their amount without claiming any interest. There is nothing on record to show that at the time amount of earnest money was ordered to be refunded, the applicants lodged claim for interest or not. If they did not lodge any such claim, it is deemed to be waived/abandoned and if they lodged any claim but not awarded, it is deemed to be rejected. In the given situations, they cannot claim interest. The present applications are after thought. The judgments referred to above have no application to the facts and circumstances of the present case. The properties having been sold, the interest in the property has already passed on to the successful bidder. There is no property with the Official Liquidator which can be subjected to the charge of interest. In both the cases referred by the learned counsel for the applicants, the property of the Company was yet to be sold and it is under these circumstances, that in case of **Commissioner of Sales Tax, U.P. (supra)**, the Hon'ble Supreme Court

directed that the interest payable to the bidder whose earnest money has been refunded shall also be taken as liability against the Company. The applicants are not entitled to any interest in the given circumstances.

(9) In view of the above, I find no merit in both the applications and the same are dismissed.

(10) Copy of this order be also placed on the record of each concerned file.

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***R.N.R.***