

Security Interest (Enforcement) Rules, 2002, Rule 9(4) - Four days' delay which was caused in terms of the original auction notice, in deposit of the auction bid amount , in no manner, would frustrate or annul the auction proceedings -

Under the Preamended Scheme of Rule 9(4), there was no written consent by all the three partners, namely, secured creditors, borrowers and auction purchaser – Respondent borrowers in the first instance approached the Tribunal assailing the auction notice issued by the respondent Bank (secured creditor) and were able to secure an interim order from the Tribunal dated 26th March, 2015 permitting the auction proceedings to continue, subject to the condition that the borrower shall deposit Rs.6 lakhs directly with the respondent Bank within 15 days from the date of order, which admittedly expired on 9th April, 2015 and the respondent borrowers failed to deposit the aforesaid amount – On the last date i.e. 9th April, 2015, an I.A. was filed seeking extension of time period by 15 days for depositing the sum of Rs.6 lakhs and as there was no stay in withholding the auction proceedings – Auction purchaser deposited not only the earnest money but 25% of the bid amount in the first instance on 28th March, 2015, the balance 75% of the bid amount was deposited on 15th April, 2015 – In interregnum period was in incomplete phase of flux as to what will be the fate of the auction purchaser pending proceedings before the Tribunal, more so when the application was filed by the respondent borrowers on 9th April, 2015 seeking extension of time and that being the situation, 75% of the bid amount was deposited on 15th April, 2015 and sale certificate was issued – Still thereafter the Tribunal granted extension of 15 days' of time to the respondent borrowers by an order dated 17th April, 2015 to deposit the sum of Rs.6 lakhs, the respondent borrowers failed to deposit the aforesaid amount and as it reveals from the record, a further time was granted to the respondent borrowers to deposit a sum of Rs.6 lakhs by an order dated 1st May, 2015 and much before that, the auction proceedings were finalised and even the rectification deed came to be executed on 21st April, 2015 – In the given facts and circumstances, the four days' delay which was caused in terms of the original auction notice, in no manner, would frustrate or annul the auction proceedings and the Debts Recovery Tribunal has rightly held that because in such state of flux, particularly when the bank/secured creditor requested the auction purchaser to wait for some time because the borrowers are negotiating with the bank in the light of interim order dated 26th March, 2015 of the Tribunal, delay in depositing 75% of the bid amount by four days in no manner would frustrate the rights of the parties inter se, more so, when the conduct of the borrowers in getting extension orders on two different occasions and still not depositing Rs.6 lakhs in terms of the order of the Tribunal would clearly reflect that the intention of the borrowers was only to frustrate the auction sale by one reason or the other, which they could not succeed

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