

**BEFORE DESIGNATED COURT UNDER MPID ACT AT
BOMBAY CITY CIVIL & SESSIONS COURT AT MUMBAI**

MISC. APPLICATION NO.409 OF 2016

IN

MPID CASE NO.01 OF 2014

IN

C.R.NO.89 OF 2013

M/s. HERO WIRETEX PRIVATE LIMITED)
A company registered under the Companies)
Act, 1956 having its registered office at Rajam)
and Corporate office at Bangalore,)
Through its representative)
Mr.K. V. Narshimaha Murthy)
Age 55 years) .. **Applicant**

Versus

- 1. State of Maharashtra**)
Through Economic Offence Wing)
Unit-V, First Floor,)
STF Building,)
Azad Maidan Police Station Compound)
Mumbai – 400 001)
)
- 2. M/s.Metkore Alloys & Industries Ltd.,**)
Plot No.18, Sagar Society,)
Road No.2, Banjara Hills,)
Hyderabad,)
Andhra Pradesh – 500 034)
)
- 3. M/s. National Spot Exchange Ltd.**)
At 4th Floor, FT Tower, CTS No.256 & 257)
Suren Road, Chakala, Andheri (East),)
Mumbai 400 093) .. **Respondents**

**Learned Advocate Mr.Amit Shirsath for the applicant.
Learned SPP Mr.Avhad for the State/respondent No.1.
Learned Advocate Purvi Doctor for NSEL/respondent No.3.
Learned Advocate Mr.Karnik for the Intervener.**

CORAM : AJAY DINODE
Special Judge, MPID Act
& Addl. Sessions Judge,
City Civil & Sessions Court,
Gr.Bombay

DATE : 09th February, 2017
(Court Room No.33)

: ORDER :

By this application, M/s. Hero Wiretex Pvt. Ltd. applied to accept the offer for purchase of 14240 MT of ferrochrome, which is attached from M/s. Metkore Alloys & Industries Ltd. and lying in the custody of the competent authority.

2. According to the applicant, the applicant company is duly incorporated company under the provision of law and carries the business of manufacturing of the cables, iron and steel. The applicant company is interested in purchasing of the stock of ferrochrome lying in the custody of the competent authority at Tekkali, Andhra Pradesh for Rs.5 crore. The applicant company shown readiness to deposit 10% of the total price upfront and gave the schedule of payment of the remaining amount. Therefore, the applicant company claimed the acceptance of the offer of purchase of ferrochrome by this application.

3. Respondents and the competent authority called upon to file the reply.

4. The competent authority/Respondent No.1 filed the reply at **Exh.4** and contended that the ferrochrome of M/s.Metkore Alloys & Industries Ltd. at Andhra Pradesh was attached and as per the orders of

the Secretary, High Court Committee, Bombay on 03/12/2015, the stock and samples of the attached ferrochrome was sent for analysis to M/s.Bokari Steel and M/s. National Metalogical Laboratory, Jamshedpur, Zharkhand. As per order dtd.17/12/2015, this Court directed the auction sale of ferrochrome of M/s. Metkore Alloys & Industries Ltd., Andhra Pradesh. Accordingly the public notices were issued on 04/03/2016 and 14/07/2016 in the local newspaper. In response to the public notice, no bidder appeared and the auction sale process was not found fruitful.

5. However, according to the competent authority, after completion of the period of auction sale, 3 purchasers approached to the competent authorities and offered their bids as under

<u>Sr. No.</u>	<u>Name of the purchaser</u>	<u>Rate (Per Metric Ton)</u>
1.	M/s.Yash Metal Impex P. Ltd., Mumbai	225/-
2.	M/s. Metals & General Trading Company, Mumbai	230/-
3.	Shri Manohar Kotiyan (Representative of Shri Barada Prasanna)	Entire stock Rs.1 crore

In the meanwhile, this application is filed by the applicant giving offer to purchase the ferrochrome for Rs.5 crore. Hence the competent authority has no objection to accept the offer as the offer appears to be highest and reasonable. However, the competent authority claimed that the installments as sought by the applicant cannot be granted and the applicant shall purchase the stock of ferrochrome on “as is where is basis”, without making any grievance about the quality and quantity of the ferrochrome.

6. NSEL/Respondent No.3 filed its reply and contended that the stock and the warehouse was not in custody of the NSEL and it is attached by this Court through the competent authority. NSEL has no objection to accept the offer, if found just and appropriate. However, the installments as sought for cannot be granted and the applicant can be allowed to purchase the ferrochrome on “as is where is basis” at its own expenses of transportation.

7. The original informant-Mr.Pankaj Saraf intervened the application as per **Exh.5**, which was allowed and contended that as the offer of the applicant appears to be highest, it can be accepted and the ferrochrome, which is the perishable product can be sold as offered by the applicant for Rs.5 crore. However, the installments claimed by the applicant cannot be granted and the bank guarantee shall be taken from the applicant for the performance of the offer. The goods can be sold on “as is where is basis”, at the costs of the applicant company.

8. As the applicant company made a direct offer to this Court, this Court directed the competent authority to inform the interested parties, who gave offer to purchase the ferrochrome and to appear before the Court to put their offer before the Court. Accordingly the competent authority informed the intended buyers, who appeared before the competent authority and filed the compliance report at **Exh.7** and filed the additional reply at **Exh.6** reiterating the reply filed previously at **Exh.4**.

9. In response to the notice to the intended buyers, one of the buyer Mr.Manohar Kotiyan was present before this Court on 25/01/2016. The other interested parties were absent. On oral inquiry

by this Court, Mr.Manohar Kotiyan gave offer and proposed price of Rs.1 crore for the entire stock of ferrochrome before this Court.

10. In the light of the above facts and circumstances and in view of the fact that the auction sale process of ferrochrome, which was directed by this Court as per order dtd.17/12/2015 was failed in-spite of the public notices dtd.04/03/2016 and 14/07/2016, offer given by the applicant company to purchase the ferrochrome for Rs.5 crore appears to be acceptable and higher. The other proposed buyer, Mr.Manohar Kotiyan gave the offer of only Rs.1 crore, which is much lower than the offer of the applicant company. No other intended buyer or purchaser approached to this Court in-spite of the public notices stated above and written intimation given by the competent authority as per the compliance report at Exh.7.

11. In the light of these circumstances, the offer of the applicant to purchase ferrochrome directed to be sold as per the order dtd.17/12/2015 can be accepted. All the parties unanimously consented for accepting the offer of applicant company to purchase the ferrochrome of M/s.Metkore Alloys & Industries Ltd.. In view of such unanimous agreement of all the parties and the fact that the applicant company gave the highest offer, the offer of the applicant company is liable to be accepted.

12. However, considering the submissions of all the parties and the facts and circumstances of the case, the payment installments quoted by the applicant cannot be accepted. In the facts and circumstances of the case, the offer of purchase of ferrochrome of the applicant company lying at Tekkali, Andhra Pradesh deserves to be

accepted with directions that the applicant company shall purchase the ferrochrome on “as is where is basis” and shall pay the amount of Rs.5 crore in two installments, on following terms and conditions.

: O R D E R :

1. Misc. Application No.409 of 2016 is partly allowed.
2. The offer of the applicant company to purchase the ferrochrome lying at Tekkali, Andhra Pradesh with the competent authority for Rs.5 crore is accepted on “as is where is basis”.
3. The applicant company shall pay the amount of Rs.5 crore in two installments.
4. The applicant company shall pay the first installment of Rs.2.5 crore on or before 20/02/2017 in the account maintained by the competent authority with Bank of India bearing Account No.001720110001136, D.N.Road Branch, Mumbai IFSC Code No.BKID0000017.
5. After payment of the first installment of Rs.2.5 crore, the applicant company shall be allowed to lift 25% of the stock of ferrochrome -approximately 3600 metric ton of the ferrochrome.
6. The applicant company shall weigh and transport the ferrochrome at its own costs and shall furnish the report of weight to the competent authority.
7. The applicant company shall pay the remaining amount of Rs.2.5 crore on or before 10/04/2017 in the above described account of the competent authority.
8. After payment of the second installment, the applicant company shall be entitled to lift the remaining stock of

ferrochrome at its own expenses.

9. The applicant shall weigh and transport the remaining stock of the ferrochrome and submit the report of the weight to the competent authority.
10. The offer of the applicant company about purchase of ferrochrome is accepted on “as is where is basis” and the applicant company shall not raise any objection about the quality, quantity or the nature of the ferrochrome and any such objection will not be considered.
11. If the applicant company failed to pay the second installment of Rs.2.5 crore for lifting the remaining stock of ferrochrome, the installment of Rs.2.5 crore deposited by the applicant company shall be forfeited with the competent authority and the applicant will not be entitled to claim any quantity of ferrochrome towards the payment of Rs.2.5 crore towards the first installment.
12. Misc. Application No.409 of 2016 stands disposed of accordingly.

Dt.09/02/2017

(Ajay Dinode)
Special Judge, MPID Act &
Additional Sessions Judge,
City Civil & Sessions Court,
Gr. Bombay

Dictated on : 09/02/2017
Typed on : 13/02/2017
Signed on : 13/02/2017

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

On 13/02/2017 at 4.00 p.m.

UPLOAD DATE AND TIME

Mrs. M. M. Salgaonkar
NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	H.H.J. Shri Ajay R. Dinode, C.R.No.33
Date of Pronouncement of JUDGMENT/ORDER	09/02/2017
JUDGMENT/ORDER signed by P.O. on	13/02/2017
JUDGMENT/ORDER uploaded on	13/02/2017