

Sold By Auction & Electric-Auction: Opportunities and Challenges

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Abstract

Now a day the sale through Auction has become a moderate and effective mode for getting the comparative price of the saleable property at International as well as national level. The procedure adopted at the national as well as International level is same except some enabling clauses of the Auction Sale. In Auction Sale movable or immovable properties are put up for sale and auctioneers are called for their bid for the purchase of the said property by open bidding or by submitting their bid offer in the closed envelope to the owner of the property and if the auction is effectuated by the auction-house than to the said auction house for their consideration. In recent years, not only the private property holders but the Government organizations also effectuate the sale of their products/properties through auction. The modern trend for the industrialized development is getting momentum by adopting the auction process for the beginning of their new projects. The industrialists wish to complete their projects in time without any delay so that they may boost up the economy of the country which may affect the social living standards of the public at large by providing them better property at a cheaper rate. The right to accept or reject the bid is solely lies with the holder of the property even if the bidder is ready to fulfill all the terms and conditions which were published in the auction notice. Therefore, effectuation of the auction completely vests with the owner or the poser of the property. In India, the auction sale is being effectuated under Section 64 of the Sale of Goods Act, 1930.

Historical Back-Ground

The auction is such a straightforward and obvious way of obtaining money for goods by matching supply and demand at a particular time, that it is not surprising that its ancestry can certainly be traced to antiquity. Herodotus writes that auctions existed at about 500 BC in Babylon, the transaction being primarily concerned with the property seized from opponents in war or yearly sale of women of marriageable age. On historically firmer ground, there has been considerable juridical investigation of auction sales under Roman law. The Roman auction proceeded in a way familiar to present-day auction-goers. The intended auction was announced publicly by a praeco (herald) and by written proscriptio (notice). The sale would be held in an atrium auctionarium (auction hall). Lots were probably available for prior inspection and the praeco acted as auctioneer, putting up the lots for sale and intimating reserve prices. Eventually the lot would be knocked down to the successful

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bidder. It is thought that such auctions were held under the ascending-bid system, as the word 'auction' is connected to the Latin roots *augere* and *auctum* (to increase). Examples are known of auction sales on bankruptcy and to meet state deficits. In England the recorded history of auctions is much more recent. Chattel auctioneering as a profession can be traced back to shortly after the Restoration. Sales of pictures and furniture were held by entrepreneurs in coffee houses, public houses and the like. An early catalogue of February 1689/90 refers to the selling of 'paintings and limning by auction' at the Barbadoes Coffee House, and to the fact that 'of late the worthy gentlemen who comprised the buyers had both by their presence and custom, promoted and encouraged' the institution of the auction. The notice also refers to the fact that printed conditions of sale together with an additional one, namely 'that no Person or Persons shall be admitted to bid for his, or their own Pictures etc.' are to be displayed at the place of sale. As already indicated, displayed Conditions of Sale were from earliest times an important feature of the auction. In history of auction houses, Sotheby is a well-known name in world class works in art since its establishment in 1744 and It also became the first international auction house in 1955 when it expanded from London to New York and then in Hong Kong (1973), India (1992) and France (2001), and China (2012). Sotheby's Bid Now programme gives platform to public to view all auctions live online and place bids from anywhere in the world.

Economic Considerations in Auction Sold

Our main technical concern is to analyze, in layman's terms, the comparative economic efficiency of selling goods by auction as opposed to the normal alternative of some variety of private treaty sales. With regard to private treaty sales of goods, typically either they are on a take-it-or-leave-it basis, for instance in the supermarket where there is no opportunity to bargain with regard to the price, or the pricing policy may involve negotiation between buyer and seller. By contrast, if the auction is chosen as the means of disposal, competition between bidders for a particular lot is focused at a particular time and place, supply and demand are at that time adjusted until they are in equilibrium by the emergence of the highest bid, and the sale is concluded. The price determinant here appears to be set by the buyer. The seller can have, however, a residual control by fixing a reserve price below which he is not prepared to sell. This will normally attract a penalty in the form of a commission to the auctioneer on a lower scale than if the buyer were successful, and this penalty tends to deter the fixing of too high a reserve. What the highest bidder will bid may vary from time to time and place to place, even assuming the goods are identical. The presence of two or more eager potential buyers will force up the price of a lot beyond what might be regarded as its 'market' value. It is also well known that a favorable ambiance, for instance the sale of the contents of a stately house in situ, may engender an atmosphere where psychological rather than economic reasons can predominate in fixing the price of what might not necessarily be particularly meritorious lots on their own.

In terms of general economic efficiency, if a particular selling scheme maximizes returns and minimizes the effort expended by buyers and sellers, its utility will be greater. Whether a sale by auction will be the most appropriate way of disposing of particular goods may well depend on their type. Auctions of commodities in bulk are common throughout the world. As a means of market distribution this is obviously to be preferred in most cases over the alternative of the vendor seeking out individual buyers for small lots. The effort expended in the latter exercise would cost more than the possible difference between the aggregate prices so obtained and the price obtained at one point

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of time at the auction. Auctions are also a highly effective method of disposing of property for which there is no 'exchange' or readily available market. A private vendor of, let us say, antique furniture or antiquarian books or valuable paintings may approach individual dealers or retailers. However, it is difficult for him to judge whether or not he has got the best possible offer and the process can be time-consuming and expensive. The disincentive to him of the auction room is the auctioneer's commission. In addition to this, the buyer's price may be depressed by the likelihood that under the Conditions of Sale he will also have to pay a 'premium' on top of the hammer price. Nevertheless, the auction's disadvantages may be outweighed by a surer sale. The facility is particularly useful to the private vendor or personal representatives of a deceased's estate. Some auctioneers refuse to accept lots other than from private sources.

Electric-Auction

Online auctions have become increasingly popular over the last two decades, many dating their serious commencement to when in September 1995, Pierre Omidyar after realizing that there was a demand to buy and sell almost anything online, created eBay, initially called Auction web, which took off and, unlike most of its rivals, is still flying strongly. It floated in the USA in 1998 and its share value has fluctuated but has for some time held up reasonably well. The auction house is in physical terms 'virtual'. As a subset of the virtual auction, one increasingly finds a real time physical auction where internet bidding facilities are provided, thereby substantially increasing the pool of potential bidders. The essence of the internet auction idea is similar to that formerly in operation for postage stamps, that is, ascending bids from a stipulated starting point are sought over a set period of time, usually between three and ten days, and electronic bidding takes place over the internet rather than by phone or fax. The actual methodology is similar to the seventeenth century candle auction and Samuel Pepys would have felt quite at home. The tension mounts as the time for the final bids gets closer and there are even devices now which enable the bidder to register a winning bid on eBay so near the deadline that the opposition cannot compete in time.

Practicle Aspects the Electric-Auctions

Online auctions are gaining popularity because of opportunities, it gives to buyers, sellers as well as auction sites but it also contains various challenges. The first and utmost question arises whether auctions conducted wholly virtually over the internet really are auctions, properly so-called. Many auction sites such as eBay claim not to be auctioneers and only to provide a platform whereby sellers and buyers may be brought together directly in order to contract. Another problem is that, unfortunately, fraud or misuse of the system is inevitable. Fraudulent practices may take the form of distortion of the bidding process, and post-sale failure to deliver contractual, or any, goods by the seller and failure by the buyer to pay. Distortion of the bidding process can take the form of 'bid shilling' which occurs where the seller or co-conspirators drive up the price by puffing. 'Bid shielding' is a device to depress the price by frightening off the competition; the would-be buyer, or one acting in cahoots with him, places a bid for a lot at a grossly inflated figure only to withdraw it at the last moment, leaving a shielded lower bid as the winning bid. Whilst these devices have their counterparts in the real auction world, the ability to create false identities in the virtual world leaves internet auction sales peculiarly vulnerable to this sort of activity. Much the same can be said for non-contractual delivery and non-payment. Online auction sites have adopted the following devices

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or give the following advice, to mitigate problems. For a start, buyers and sellers 'rate' each other on transactions. The result is known as 'feedback', and the score is easily ascertainable. Sellers will therefore not thrive for long if they get a bad reputation for misdescribing their goods or other sharp practices. Secondly, trade sellers on the internet are well advised to display their Conditions of Sale to potential buyers before any transactions are initiated. The reasons are the same as apply to any other form of auctioneering contract. Parties are often encouraged to solve their dispute by alternate dispute resolution system, mainly arbitration or mediation.

Legal Aspects Governing Auction Sold in India

The rules regarding an auction sale are found in the Sale of Goods Act, 1930. Section 64 of the Act specifically deals with the rules governing an auction sale.

1] Goods Sold in Lots

Various kind of property can be sold by the way of auction. In one time more than one goods can be put up for auction together or separately. According to subsection 1 of sec. 64, If the goods are put up for sale in a lot, then each such lot will be subject of separate contract of sale. In auction each lot put up for auction is not an offer but only invitation to offer and every bid is offer which is subject to acceptance by the auctioneer. Each lot put up for sale is invitation to an offer not an offer hence the auctioneer can withdraw the goods anytime he wants to without putting them up to sale, it does not give any cause of action to prospective bidders, even if the goods been advertised for sale at the auction.

2] Completion of Sale

Sub-section (2) of Section 64 of the Act, provides that the sale is complete when the auctioneer announces its completion by "fall of hammer or in any other customary mode." When auctioneer announce the completion of sale by any implied or express manner, it is acceptance of offer, that is bid, made by bidder and as per the Indian contract Act 1872 as soon as offer is accepted it become contract subject to the conditions for a valid contract. Till the auctioneer does not announce the completion of the sale, the prospective buyers can keep bidding and until such announcement is made, any bidder may retract his bid. At the same time, it would seem to follow from the provision that bid, being only an offer, need not to be accepted; and until bid is not accepted there is no contract between the parties. In *Rajendra Kumar Verma v. State of M.P.*, the court observed that a person making a bid can withdraw the same before its acceptance even though he is the highest bidder. The right to revoke an offer is a statutory right and cannot be taken away by a tender notice. Auctioneer is not by any law is bound to accept the highest or any bid and refusal to accept the bid gives no cause of action to the bidder at all, But where highest bidder was given the impression that his bid would be accepted auction should not have been cancelled without proper reason. In case of *Shabir Ahmed Khan v. Central Bank of India*, the sale was subject to confirmation by the secured creditor, who declines to confirm it because it was found that all the guarantors were not sieved, this was held to be proper.

This provision only deals with the completion of sale by auction, it does not specify when the property will be passed to the buyer. Passing of property will be decided by the rule regarding to the transfer of property as prescribed in The Sale of Goods Act 1930. If the auction sale of goods is

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unconditional than in respect of specific ascertained goods where nothing remains to be done for putting them in a condition ready for delivery, the property in the goods would pass to the purchaser upon the acceptance of the bid but that would not be because of Section 64(2) but because of Section 20 and such would not be the case if the goods sold there at are non-specific or unascertained goods or the auction-sale is conditional.

3] Seller Right to Bid and Reserve Price

To get the intended price subsection 5 of sec. 64 gives seller the right to place a minimum price of the property, known as reserved price auction, auctioneer need not to sale property below that price and it is not cause of action to end the auction without selling the goods if the bid does not reach to the reserve price or cross that. Seller also has right to bid in auction to make sure that they get good price of their properties. In the view of sub section 3 and 4 of section 64 of the Sale of Goods Act, 1930, it is a clear that seller can expressly reserve a right to bid and only after that seller or any one person on his behalf may bid at the auction. If seller employ more than one person to bid or if the seller bid, or employed others to bid for him, without reserving the right to bid, the sale may be treated as fraudulent by the buyer.

4] Pretend Bidding

Where sub section 3,4& 5 provides the means to protect seller from bid rigging and selling his property for lower price, Sec. 64(6) Protect the buyer from sellers pretended bidding. The seller or any other person appointed by him use pretended bidding to raise the price of the goods, the sale is voidable at the option of the buyer. That means the buyer can choose to honour the contract or he can choose to void it.

5] Rights and Duties of Parties

Ordinarily, the rights duties and liabilities arising under a contract of sale by implication of law spoken of in Section 62 refer to the rights, duties and obligations referred to in Chapter III of the Sale of Goods Act, 1930 containing provisions which lay down rules as to transfer of property as between seller and buyer and transfer of title but there is no reason why Section 62 should not apply to rights, duties and obligations arising under S. 64 in regard to auction sales. In other words. Section 64 would be subject to Sec. 62of the Act.

This provision of sale of goods act is applicable on auction of goods, as in movable property. In case of auctions of immovable property there is no such specific rule. The provisions of the Sale of Goods Act 1930;The Indian Contract Act 1872; The Consumer Protection Act 1986; The Transfer of Property Act 1882; The Registration Act 1908; The Information Technology Act 2000; The Competition Act 2002 are some of the laws which applies on sale by auction or e-auction of movable and immovable property. Banks use the auction of mortgaged properties to recover their debt and the rules given in The Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 applies to that. The procedure adopted in sale by auction has so many formalities to be observed by the bidders and there is no binding force laying on the owner of property or auction house. The persons who have any interest in bidding and wish to purchase the said property earnestly spent their precious time and money including the deposit of earnest money, if any, for the purpose of auction. There is no specific law governing all kinds of auctions such as auction of movable

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and immovable properties, E auctions, bank or government auctions etc. The existing consumer protection laws are insufficient to cope up with the electronic transactions. A specific Act to regulate auction sales and to deal with the disputes relating to the auction sales should be enacted so that frauds and unfair practices in auction sales may be curbed and interests and rights of the sellers, consumers/bidders and auctioneers may be protected.

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References

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2. (Samuel Pepys was an English diarist and naval administrator, whose Diaries give an account of the life of London from 1660-1669 (see The Diary of Samuel Pepys at <http://www.pepysdiary.com>)
3. Section 64 of the Sale of Goods Act, 1930: In the case of a sale by auction— (1) Where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale; (2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract his bid; (3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction; (4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale or for the auctioneer knowingly to take any bid for the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer; (5) the sale may be notified to be subject to a reserved or upset price; (6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.
4. Harris v. Nickerson (1873) LR 8 QB 286
5. AIR 1972 MP 131
6. Fenwick v. McDonald (1904) 6 F 850 (Court of Session)
7. Zila Parishad, Muzaffarnagar v. Udai Veer Singh AIR 1989 All 64
8. AIR 2008 AP 85.
9. The Sale of Goods Act, 1930 Section 20: "Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed".

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