
(2007) 10 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 17382 of 2006

Al-dea Electronics (P) Limited	Vs	APPELLANT
The State of Karnataka and Others		RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

Citation : (2008) ILR (Kar) 151

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Aravind M. Neglur, for the Appellant; B. Veerappa, AGA for R1 and R5, S.G. Pandit, for R2 and R.N. Narasimha Murthy, for Aaren A/S for R4, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—In this case, the petitioner has sought for a writ of mandamus directing the second respondent to cancel the auction dated 29-12-2005 and to hold re-auction of an industrial unit of the petitioner by fixing a minimum bid of Rs. 1.50 lakhs and for certain other reliefs.

2. The petitioner is a company incorporated under the provisions of the Companies Act, 1956. Petitioner had availed certain financial assistance from the second respondent - Karnataka State Financial Corporation (for short "the Corporation") for its business purpose. The petitioner was the owner of an industrial unit in Plot No. 36, KIADB Industrial Area, Hirehalli, Tumkur, measuring approximate 4 acres of land with 1600 sq.mtrs. built up industrial shed with 150 KVA, 11KV HT power installation. The petitioner has defaulted in payment of its dues to the Corporation. Therefore, the Corporation took over the industrial unit of the petitioner on 22-1 -2004 in exercise of its power u/s 29 of the State Financial Corporation Act, 1951, (for short "the Act"). The case of the petitioner is that the Corporation had intimated the conditions of sale / auction to it as per

the notice Annexure "B". Auction was conducted on 29-12-2005. In the said auction, the third respondent was declared as the highest bidder, who has quoted Rs. 120 lakhs. His bid was accepted by the Corporation. The third respondent did not pay the balance of the amount except the initial payment of Rs. 30 lakhs. The sale was not concluded as per the conditions contained in Annexure "C" letter. It is contended that the third respondent with an intention to indulge in profiteering went in search of other buyers. The Corporation willingly went on extending time ignoring the protests of the petitioner. On 22-11-2006, the third respondent brought his associate, who purchased the property by getting the deposit amount transferred to their name. With the assistance of the associates, the third respondent has made payment of the balance of the amount belatedly by more than eight months. It is contended that the Corporation has accepted the said payment on behalf of the third parties, which is detrimental to his interest. Petitioner is therefore aggrieved by the sale of the secured assets in favour of the fourth respondent herein.

3. The Corporation has filed its statement of objections contending that it had sanctioned a sum of Rs. 99.92 lakhs in favour of the petitioner between July 1989 and February, 1995. As the petitioner defaulted in repayment of the loan, its industrial unit was taken over u/s 29 of the Act on 22-1-2004. After taking over the secured assets, the Corporation brought to sale the secured assets. The Corporation took over 7 paper advertisements for sale of the assets. The V1 advertisement for sale of the assets was given on 18-12-2005 in Deccan Herald and New Sunday Express. In response to the said advertisement, the Corporation received 9 offers and all the offerors were called for sale negotiation meeting which was held on 29-12-2005. In the sale negotiation, the third respondent offered to purchase the secured assets for a sum of Rs. 120 lakhs and the next highest offer was from M/s Thermal Transfer Products (P) Limited (respondent No. 4) for a sum of Rs. 115 lakhs. The highest officer of the third respondent to purchase the assets for a sum of Rs. 120 lakhs was approved by the Corporation on 1-1-2006. However, the approval was subject to the condition that the purchaser has to pay the statutory dues. As the sale was approved by the competent authority, a letter dated 12-1-2006 was issued to the third respondent and as per the said letter, the third respondent was required to pay 25% of the sale amount i.e. Rs. 30 lakhs within 15 days from the date of receipt of the letter and the balance 75% i.e. Rs. 90 lakhs within next 45 days. Accordingly, the third respondent paid Rs. 30 lakhs being 25% of the sale amount within the stipulated period. The balance of Rs. 89 lakhs was not paid by the third respondent. The Corporation issued a letter dated 18-3-2006 to the third respondent stating that he has to pay the balance amount immediately, failing which further action would be taken. The third respondent by his letter dated 17-4-2006 intimated that he is not in a position to pay the balance amount and other statutory dues and requested to treat the fourth respondent herein, who was the second highest offeror, as his nominee for purchase of the assets. It is contended that Corporation examined the request of the third respondent as

well as the fourth respondent and took a decision to accept the offer made by the fourth respondent. Thereafter, the Corporation issued a letter of acceptance dated 17-5-2006 to the fourth respondent. In pursuance of the said letter, the fourth respondent paid the entire sale amount on 27-11-2006. Further, it has paid the interest for delayed payment. On receipt of the sale consideration, the possession of the unit was handed over to the 4th respondent on 4-12-2006.

4. The fourth respondent has also filed its objections to the writ petition contending that the 4th respondent is a manufacturer of transformer radiators. Though it has commenced its operations in a single shed in Peenya Industrial Estate as a Partnership firm in the year 1979, today, due to sheer dedication and hard work, it has become the largest manufacturer of transformer radiators in India and the second largest in the world. The present factory is spread over 5665 sq.mtrs. . More than 80% of the total sales are exports. The company has a "Star House Status" and has been conferred Reserve Bank - Exporters Gold Status. It has won several prestigious awards for its exports. The company has hundreds of employees working with it. There is a huge growing demand globally for radiators manufactured by the 4th respondent and considering the growth prospects in the present liberated economy, it wanted to expand its business activities and was looking for land for setting up its second industrial unit. It came across the advertisement issued by the Corporation in newspaper, for sale of assets of the petitioner company possessed by KSFC u/s 29 of State Financial Corporation Act, as the petitioner defaulted in repayment of the loan borrowed from KSFC. It quoted Rs. 115 lakhs and the third respondent had quoted for Rs. 120 lakhs. The third respondent had thus become the highest bidder and has paid Rs. 29 lakhs as 25% of bid amount in addition to Rs. 1 lakh to KSFC. The 4th respondent was informed by KSFC that the petitioner had consented for sale of the assets for Rs. 120 lakhs. The third respondent could not mobilise funds to discharge the estimated statutory liabilities as well as the balance payment to KSFC, though KSFC initially granted time to third respondent. In this background, to ensure that sale transaction is completed atleast on the 7th time of tender, KSFC called the 4th respondent for negotiation, as it was the second highest bidder and it was called upon to pay Rs. 89 lakhs in addition to Rs. 1 lakh to KSFC towards deposit. The sum of Rs. 30 lakhs paid by the third respondent was adjusted in this Rs. 120 lakhs and the 4th respondent had agreed with the third respondent for reimbursement of the amount paid by him to KSFC on mutual terms agreed between them. The KSFC thus received in all Rs. 120 lakhs being the highest bid amount.

5. I have heard the learned Counsel for the parties.

6. Learned Counsel for the petitioner has mainly contended that the second respondent being a statutory body is acting whimsically and in biased manner by not taking timely action to safeguard its securities. It is further contended that the Corporation has joined hands with the third respondent and is willing to suffer a loss to the detriment of the petitioner. Learned Counsel for the petitioner

submits that the Corporation in its letter Annexure R1 dated 18-3-2006 has stated that if the third respondent fails to pay the balance of the amount, the initial amount paid by him in a sum of Rs. 30 lakhs will be forfeited. In terms of the said letter, the Corporation should have forfeited the amount. On the other hand, it has sold the property in question to the 4th respondent, who is none other than the nominee of the third respondent. In this connection, he has relied on the decision of the Apex Court in the case of Gajraj Jain v. State of Bihar and Ors. ILR 2005 KAR 427.

7. On the other hand, learned Counsel for the Corporation submits that since the petitioner has defaulted in payment of dues to the Corporation, its industrial unit was taken over by them u/s 29 of the Act on 29-12-2004. The secured assets of the company was brought to sale. The Corporation took over 7 advertisements for the sale of the secured assets. The 7th advertisement for sale of the assets was given on 18-12-2005 in Deccan Herald and New Sunday Express. In response to the 7th advertisement, the Corporation received 9 offers and all the offerors were called for sale negotiation meeting which was held on 29-12-2005. In the sale negotiation meeting, the third respondent offered to purchase the secured assets for a sum of Rs. 120 lakhs and the next highest offer was from the fourth respondent for a sum of Rs. 115 lakhs. Before the first advertisement, the Corporation had secured the valuation report from the Technical Consultancy Services, Government of Karnataka Organization, who have valued the secured assets at Rs. 58.26 lakhs. Before the 7th advertisement, the property was again valued by the Technical Officers of the Corporation at Rs. 89.29 lakhs. It has received the bid of Rs. 120 lakhs. The third respondent has deposited the initial amount of Rs. 30 lakhs within the period prescribed. However, it did not deposit the balance of the amount. Therefore, notice as per Annexure R1 was issued to the third respondent. The third respondent has sent a letter as per Annexure R2 nominating the 4th respondent to purchase the property in question. Accordingly, the property in question was sold in favour of the 4th respondent.

8. Learned Senior counsel appearing for the fourth respondent has supported the action of the Corporation in selling the property in favour of the 4th respondent.

9. In the light of the rival contentions of the parties, the question for consideration is whether the Corporation has acted in a reasonable manner and in accordance with Section 29 and the State Financial Corporation Act, 1951, while transferring the assets of the petitioner to the fourth respondent.

10. It is not in dispute that the petitioner has committed default in repayment of its dues to the Corporation. The Corporation has taken over the property on 22-1-2004. Before issuing the advertisement for sale-cum-negotiation of the property in question, it has obtained the valuation report from the Technical Consultancy Services Organization, Karnataka, who have valued the property at Rs. 58.26 lakhs. It is clear from the materials on record that as many as 7 paper advertisements have been issued, for sale-cum-negotiation of the property in question. For the first six advertisements, the offers received were not matching

the valuation of the assets. Before issuing the 7th advertisement, the Corporation has again obtained the valuation report from the Technical Officers of the Corporation, who have valued the property in question at Rs. 89.29 lakhs. In response to the 7th advertisement, the third respondent made an offer of Rs. 120 lakhs and the 4th respondent made an offer of Rs. 115 lakhs. The Corporation has intimated the petitioner by its letter dated 4-1-2006, the receipt of the offer of Rs. 120 lakhs for sale of the property. It is also made known to him that KPTCL dues, stamp duty and all other statutory liabilities like the sales tax and other taxes have to be borne by the purchaser. The petitioner was also granted an opportunity to bring the highest offer if any along with EMD amount of Rs. 1 lakh within 10 days from the date of the said letter. The Corporation has made it clear that if the petitioner fails to bring the better offer within the stipulated time, it will conclude the same in favour of the offeror. The relevant portion of the letter dated 4-1-2006 (Annexure "B") is as under:

Sub: Sale of assets of M/s Al-dea Electronics P. Ltd., No. 36, KIADB Industrial Area, Hirehalli, Tumkur, u/s 29 of SFC Act.

As you are aware, your unit has been taken over by the corporation u/s 29 of SFC's Act, 1951 on 22-1-2004. Thereafter, the Corporation had issued advertisements for sale. Now we have received an offer for purchase of the assets of your unit. After negotiation, the highest offer received is Rs. 120 lakhs (Rupees one crore twenty lakhs only). The sale of assets of the unit are subject to the following terms and conditions.

1. The sale is on As is Where is Condition"
2. The sale price is Rs. 120.00 lakhs (Rupees one crore twenty lakhs only)
3. The buyer should pay 25% of sale amount i.e. 30.00 lakhs within 15 days from the date of sale communication and the balance amount of Rs. 90.00 lakhs is payable within the next 45 days thereafter.
4. The transfer chargers and dues to KIADB shall be borne by the purchasers.
5. The KPTCL dues, stamp duty and any other statutory liabilities like sales and local taxes and others, if any shall be borne by the purchaser. The possession of the properties will be handed over to the buyer only after the receipt of the entire sale consideration of Rs. 120 lakhs.
6. The corporation has decided tentatively to accept the above offer.

However, you have been given one more opportunity to bring a higher offer, if any, along with EMD amount of Rs. 1.00 lakhs within 10 days from the date of this letter.

Please note that if you fail to bring a better offer within the stipulated time, the Corporation will conclude the sale in favour of the offeror.

11. In response to the said intimation, the petitioner has sent a letter to the

Corporation dated 9-1-2006 expressing his happiness for the decision taken by the Corporation to accept the highest offer of Rs. 120 lakhs excluding the statutory liabilities and other expenses. The petitioner has clearly stated that he does not have any objection for the corporation to accept the aforesaid offer. The said letter dated 9-1-2006 (Annexure - R3) reads as under:

:Sub: sale of assets of our company u/s 29 of SFC Act.

We are in receipt of your letter with reference R-2947 dated 4-1 -2006 informing us about the sale of our company"s assets at Hirehalli, Tumkur under the above Act.

We are very happy to learn that you have decided to accept the highest offer of Rupees 120 lakhs (Rupees one crore twenty lakhs only) excluding all statutory liabilities and other expenses.

We further presume that the Clause-5 of Terms and conditions stated in your above referred letter which reads as "the KPTCL dues, stamp duty and any other statutory liabilities like Sales and Local Taxes and others if any" means all the statutory dues like Sales Tax, Commercial Tax, Central Excise, Water Tax, PF and ESIC Arrears, KIADB Dues shall be borne by the purchasers as mentioned in your Clause 5 of your terms and conditions of tender cum negotiation for sale as published in Deccan Herald News Paper dated 18-12-2005 by you.

We would like to make it clear that it is your responsibility to ensure that the purchaser selected by you clears all the above said statutory dues before sale is complete in his favour.

We do not have any objection for you to accept the above offer subject to the above said terms and conditions. This letter may kindly be treated as reply to your above referred letter from both the directors of the company.

Kindly acknowledge the receipt of this letter.

12. The third respondent has paid the initial amount of Rs. 30 lakhs. Since he did not pay the balance of the amount in terms of the conditions of the sale contained in Annexure-C dated 12-1 -2006, the Corporation has sent a letter to him as per Annexure-R to pay the balance of the amount, failing which the initial deposit of Rs. 30 lakhs will be forfeited. In response to said notice, the third respondent sent a letter Annexure-R2 dated 17-4-2006 nominating the 4th respondent to purchase the property in question on his behalf. Even otherwise, the fourth respondent was the second highest bidder, who has offered Rs. 115 lakhs for purchase of the secured assets. As noticed above, the notification for sale of the property is tender-cum-negotiation. Therefore, the Corporation has also negotiated with the 4th respondent, who has offered to pay a sum of Rs. 120 lakhs towards sale consideration of the property in question. There is no prohibition in Section 29 of the Act for sale of the property to the nominee of the original highest bidder. Therefore, I do not find fault with the action of the Corporation in selling the property to the fourth respondent.

13. It is well settled that a writ Court can interfere with the action of a financial institution, when it has acted unreasonably and unfairly to the detriment of the borrower or when the corporation has acted contrary to the provisions of the State Financial Corporation Act. In the case of *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, , the Apex Court has held that the action of the Financial Corporation u/s 29 of the Act should be tested against the dominant consideration to secure the best price. In the case of *Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others*, , the Apex Court has laid down the legal principles to be followed by the High Courts while dealing similar cases. They are as under:

i) The High Court while exercising its jurisdiction under Article 226 of the Constitution of India does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ Courts into appellate authorities over administrative authorities.

ii) In a matter between the Corporation and its debtor, a writ Court has no say except in two situations;

a) there is a statutory violation on the part of the Corporation, or

b) where the corporation acts unfairly i.e., unreasonably.

iii) In commercial matters, the Courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decision, however, more prudent, commercial or business like it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the act of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action u/s 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporation cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

14. As noticed above, the corporation has taken all the care for securing the best price for the sale of the secured assets. It has issued as many as 7 advertisements for tender-cum-negotiations of the property in question. It has also obtained valuation report from the competent authorities before the first advertisement and also before the seventh advertisement. It is also evident that the petitioner was informed of the offer received by the corporation for purchase of the assets. Petitioner was given an opportunity to bring better offer, if any. The petitioner has sent his reply stating that he was satisfied with the highest offer received by the corporation for Rs. 120 lakhs excluding the statutory liabilities and other expenses. No doubt, the Corporation has issued a letter to the third respondent as per Annexure-R stating therein that if the 3rd respondent does not pay the balance of the amount, the initial deposit will be forfeited. Thereafter, the negotiation has taken place between the parties and after a period of 8 months, the property has been sold in favour of the fourth respondent. The materials on record clearly show that the property has been valued at Rs. 89.29 lakhs on 20-11-2005 and the 7th advertisement was issued on 18-12-2005, and the property was sold at Rs. 120 lakhs. The material on record further clearly shows that for belated payment of the amount, the Corporation has collected interest and the petitioner was informed that the said interest will be credited to his account. In *Gajraj Jain's Case* (supra), relied upon by the petitioner, the Apex Court has held that the publicity and maximum participation has to be obtained by the corporation because the bidder should know the details of the assets. It has been further held that it is imperative for the corporation to have the assets proposed to be sold, valued. In the present case, the Corporation has not only valued the property before issuing the tender notification, maximum publicity has been given to enable the bidders to participate in the auction sale.

15. It is also relevant to note the conduct of the petitioner during the pendency of the writ petition. As noticed above, the sale price fixed for the sale of the property in question is exclusive of other statutory liabilities. The petitioner himself sent letters to the statutory authorities for recovery of the statutory dues from the fourth respondent, which is clear from Annexure "R3" to "R6". The said documents go to show that he had no objection for the sale of the property as he has instructed the authorities to recover the statutory dues from the fourth respondent.

16. Having given my anxious consideration to the arguments of the learned Counsel made at Bar, I do not find any merit in any of the contentions urged on

behalf of the petitioner. Petitioner is not able to show violation of any statutory provisions by the Corporation while selling the secured assets. The corporation has acted in a bonafide manner while disposing of the property. The procedure adopted by the corporation to dispose of the secured assets of the petitioner to realise the dues cannot be held to be unreasonable or unfair.

In the result, the writ petition fails and accordingly dismissed. No costs.