

(2017) 09 CAL CK 0021
In the Calcutta High Court
Case No : 108 of 2017

ANUP HOME ROY & ANR.

APPELLANT

Vs

UNION OF INDIA & ORS.

RESPONDENT

Date of Decision : 08-09-2017

Acts Referred:

Citation : (2017) 09 CAL CK 0021

Hon'ble Judges : Sanjib Banerjee, Siddhartha Chattopadhyay

Bench : DIVISION BENCH

Advocate : Sonia Sharma, Jayanta Mitra, Jishnu Saha, Radhika Singh,
S.Dasgupta, Ishan Saha, S.Dhar, Ranajit Chowdhury

Judgement

1. The appeal arises out of an order dated June 16, 2016 by which both the immovable property and the movables at the factory site of the company (in liquidation) at Kankinara, North 24-Parganas have been sold in favour of the respondent no.4 herein at a sum of Rs.12 crore.
2. The appeal is by some erstwhile workers of the company (in liquidation).At the initial stage of the appeal, it was submitted on behalf of the appellants that since the company was ultimately under the control of the Central Government, its assets had been appropriately valued by agencies appointed by the Central Government.
3. It was also submitted that the price at which the entire assets at Kankinara were sold did not even match the valuation prepared at the behest of the official liquidator.
4. The most surprising element of the order of June 16, 2016 is the complete lack of reference therein to the valuation of the assets.
5. It is elementary that assets sold by a Court are based on a valuation report obtained by the Court.
6. In case of company sales, the valuation report is obtained by the official

liquidator and the sealed valuation report is presented to the company Judge to be opened at the time of auction in court.

7. Ordinarily, the Court attempts to meet the valuation while selling the assets.

8. In any event, if, on the first occasion, the valuation is not met, the Court scarcely permits the sale to go through.

9. If after several attempts the valuation is not met, reasons are assigned by the Court to sell the assets at a price lower than the valuation indicated.

10. It is the admitted position in this case that the valuation report came to light only in course of the appeal or after the order impugned was passed.

11. Even the purchaser corroborates such position. The purchaser has applied for sale of only of the movables at the Kankinara unit of the company (in liquidation) to be confirmed in favour of the purchaser and the balance consideration refunded for the purchaser to return possession of the land and the immovable property that the purchaser acquired under the order impugned.

12. At the behest of the appellants, notices were issued to several agencies and even the State Government has been invited to participate in the present proceedings.

13. A letter has been received by advocate for the appellants from Mulyankan Consultants Limited that such company had been assigned the duty of valuing the assets at the factory unit of the company (in liquidation) in Kankinara, but no final report had been prepared or valuation submitted to the Department of Disinvestment.

14. No independent valuation of the movables at the Kankinara unit has been conducted by the appellants, though the appellants may be handicapped in undertaking such an exercise.

15. Even the immovable property at the Kankinara unit has not been valued by the appellants, though the appellants were aware of the extent of the property.

16. The valuation report obtained by the official liquidator and which was available with the company Court at the time of passing the order impugned reveals the following: Land: Rs.18,51,30,000/- (distress value).Rs.29,62,07,146 (market value).Structures: Rs.1,23,34,000 (distress value).Rs.1,97,34,349 (market value).Other movables: Rs.4,27,92,000 (market value).In view of the offer made by the purchaser, it is proposed that the amount paid by the purchaser will be adjusted against the market values of the movables and the structures at the Kankikara unit of the company (in liquidation) and the balance will be refunded, along with any interest that may have accrued thereon, to the purchaser upon the land and immovable property being surrendered in favour of the official liquidator.

17. It is recorded that despite this matter appearing occasionally and remaining

pending for several months, no attempt for valuation of even the land has been made on behalf of the appellants and no other purchaser has been brought by the appellants for either the movables or the immovable property.

18. The matter will stand over for a fortnight. It will be open to the appellants to put the official liquidator in funds in couRs.of this week for the official liquidator to invite offers by September 11, 2017 for sale of both the movables (including structures) and the immovable property at the Kankinara unit of the company (in liquidation).It will also be open to the appellants to bring direct offers for both the movables and the immovables or either.

19. All offers have to be accompanied by earnest deposits of value not less than 20 per cent of the valuation as per the report obtained by the official liquidator. The earnest deposits should be tendered to the official liquidator or carried to court in the form of bankers cheques or demand drafts or like instruments, not being personal cheques.

20. In the event there is no better offer than the present purchasers for the structures and the other movables, the sale of the structures and other movables as confirmed by the order impugned may be left undisturbed.

21. If there are other offeRs.the present purchaser will be permitted to match the same; with the rider that any other offerer would have to outbid the purchaser.

22. The purchaser has serious reservations to such part of the above order that pertains to the structures and movables that have been purchased by it.

23. According to the purchaser, some of the structures and movables had already been sold before any order was passed in the present appeal; and, the rest has been contracted to be sold and the materials have not been removed in view of the order subsisting in this appeal.

24. Such aspect of the matter will also be considered in the unlikely event any offers come in for the structures and the movables at the said property.

25. The purchaser should make it convenient for intending purchasers to visit the Kankinara unit to inspect whatever movables and structures may be lying thereat at its present state. Such visits may only be upon prior notice to the purchaser.

26. The advertisements will be published in the same newspapers where the previous notices had been published. The official liquidators website should also prominently refer to this order.

27. It is also recorded that it is the submission of the purchaser that a substantial part of the movables and the structures at the Kankinara unit had already been removed prior to the fiRs.order of injunction being passed in this appeal.