
(2011) 02 AHC CK 0136

In the Allahabad High Court

Case No : Misc. Company Application No. 4 of 2003

B.I.F.R.

APPELLANT

Vs

Jyoti Extractions (P) Ltd.

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Companies (Court) Rules, 1959 — Rule 6, 9

Citation : (2011) 5 ADJ 19

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Issue notice to Shri B.K.L. Srivastava, Deputy Director, Ministry of Corporate Affairs (the then Official Liquidator) by speed post along with a copy of this order in order to enable him to explain the following by means of an affidavit before the Court: On 12.05.2008 an application on behalf of Abhilasha Gupta, under Rule 6 and 9 of the Companies (Court) Rules, 1959, was served upon the counsel for the official liquidator as is clear from the endorsement made on the copy of the application. On the same day a copy was also served upon Gopal Mishra, counsel for the purchaser. The application in fact was presented before the Court:

2. on 14.05.2008. The proceedings for settling the sale of the property of the Company took place before the Company Court on 13.05.2008. On the relevant date an issue was raised as to whether the plant and machinery as mentioned in the auction notice would include the feeding plant, machinery, platform, shade and cover etc. or not (herein after referred to as the "properties"). It is in respect of these properties that an offer of Rs. 7.5 lakhs was made in the Application No. 11516 filed by Abhilasha Gupta. On 13.05.2008, the Company Court permitted the official liquidator and the purchaser represented by Gopal Mishra, Advocate to enter into a private negotiation within the Court premises for the aforesaid property. The purchaser agreed to pay a sum of Rs. 3.5 lakh for the property in addition to the bid already offered for the remaining part of the

industry. With the intervention of the Court, this amount was enhanced to Rs. 4 lakhs. The sum of Rs. 4 lakhs in fact was deposited by the purchaser on 13.05.2008 itself through a cheque and the auction was closed. Subsequently a report was submitted by the official liquidator stating therein that he entered into a private negotiation after the Court proceedings with the purchaser of the property and could solicit from him an additional sum of Rs. 1.5 lakh. On that basis it was contended that the value fetched by the property was now Rs. 5.5 lakh, therefore, the offer of Abhilasha Gupta of Rs. 7.5 lakhs was of not much relevance.

3. A supplementary affidavit has been filed by the Regional Director before the Court today and it has been stated that such procedure of private negotiation after the sale was confirmed by the Court is not known to law.

4. This Court may record that from the order sheet of the present Company Petition at least this much is clear that up to the date the auction was confirmed by the Company Court, neither the purchaser of the property nor the official liquidator informed the court that they have been served with an application by Abhilasha Gupta offering a sum of Rs. 7.5 lakhs for the same property.

5. Prima facie this Court has reasons to record that there has been a transaction between the official liquidator and the purchaser of the property de hors the procedure known to law and the Company Court has been made a party to it by concealment of material fact namely service of the application by Abhilasha Gupta on 15.05.2008. The practice has to be stopped and everybody including the official liquidator has to be given to understand that such illegal practices will not work in a Court of law.

6. The then official liquidator may disclose as to why this Court may not direct that contempt proceedings be initiated against him for not disclosing the complete facts and thereby succeeding in obtaining an order from this Court. Reference may also be had to the judgment of the Apex Court in the case of Dhananjay Sharma Vs. State of Haryana and Others, and in the case of Afzal and another Vs. State of Haryana and others, Counsel for the Company which is being wound up seeks time to file his reply on the valuation report.

7. Shri B.K.L. Srivastava may file his affidavit by the next date fixed.

8. List on 08.03.2011.

9. The presence of the Regional Director is exempted unless directed otherwise.