
(2011) 04 AHC CK 0002

In the Allahabad High Court

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

B.I.F.R.

APPELLANT

Vs

M/s. Jyoti Extractions (P) Ltd.

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Citation : (2011) 5 ADJ 19

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

**Advocate : O.L.B.K.L. Srivastava, Raj Nath and N. Shukla, for the Appellant;
A.K. Gaur, Rohit Agrawal, Sharad Ranjan Nigam and V.D. Chauhan, for the
Respondent**

Final Decision : Disposed Of

Judgement

Arun Tandon, J.—This company petition has been nominated to this Court under the orders of the Hon'ble the Chief Justice. From the records of this company application, this Court finds that absolutely no procedure known to law had been followed in the matter of sale of immovable property described at Item No. 5 of the valuation report prepared by Mr. S.B. Bhargava after spot inspection on 1.5.2008 in respect of the buildings of the Company.

2. Item No. 5 of the valuable report qua the buildings of the company Annexure to this petition at page 10 reads as follows:

BUILDINGS

M/s. Jyoti Extractions Pvt. Ltd. (in liqn.) situated at Plot Nos. H-9 and 10, Road No. 6, UPSIDC Industrial Area, Naini, Allahabad

5. Main Work Shed-Plant-MS column

MS Sheet platform, AC Sheet roof

Ground Floor 314 Sqm. 2500/- 7,85,000.00

First Floor 314 Sqm. 2500/- 7,85,000.00

Second Floor 91 Sqm. 2500/- 2,27,500.00

Third Floor 86 Sqm. 2500/- 2,15,000.00

The total value of Item No. 5 works out to 20.12.

3. An advertisement was published by the Official Liquidator after permission was granted by the Company Court for the sale of plant and machinery only of the company under liquidation. It is admitted to the Official Liquidator that the reserved price of the plant and machinery as disclosed in the advertisement was Rs. 31,32,500/-. The highest bid offered for the plant and machinery was Rs. 34 lacs and odds. The auction was approved by the Company Judge and permission was granted to remove the plant and machinery as is apparent from the letter of the Official Liquidator filed alongwith application made by the Official Liquidator dated 8.5.2008 (part of Annexure 3).

4. After nearly one month of the grant of the permission to remove the plant and machinery, the Official Liquidator made an application before the Company Judge stating that the buyer of the plant and machinery is facing certain difficulties in removal of the plant and machinery, he wants that certain MS columns and AC sheet roof and the MS sheet platforms attached with Main Oil Refinery Plant and its steel infrastructure may also be sold as part of the plant and machinery.

5. The details of the structures so furnished was nothing else but part of the building described at Item No. 5 of the valuation report total value whereof was Rs. 21.12 lacs.

6. It is repeated that this Item No. 5 which was part of the building as per valuation report was not subject-matter of the advertisement in response whereof bids had been received. The Official Liquidator without there being any order of the Company Court enclosed a fresh valuation report qua Item No. 5 of the building contrary to the report submitted earlier by Mr. S.B. Bhargava, the depreciated value of Item No. 5 was shown as 7.45 lacs only.

7. On the basis of the said valuation report, the Official Liquidator and the purchaser of the plant and machinery entered into a private compromise during the Court proceedings to purchase part of the building mentioned at Item No. 5 for Rs. 4 lacs only. This sale by private negotiation during Court proceedings was approved by the Company Judge as is reflected from the Court order dated 9.5.2008.

8. The sum of Rs. 4 lacs were deposited through cheque in the Court on the same date, the Court by an order in writing closed the proceedings for sale to Item No. 5 of the building.

9. What is further surprising is that an oral permission is stated to be granted by the Company Court to the Official Liquidator to further negotiation with the buyer out side the Court for enhancement of this sale price. The Official Liquidator after

close of the Court proceedings obtained a cheque for an additional sum of Rs. 1.50 lacs from the buyer. This action of the Official Liquidator was also approved by the Company Court.

10. This Court on examination of the records of present company petition after nomination, was surprised to notice the procedure which had been adopted in the matter of sale of immovable property worth Rs. 20 lacs by private negotiation during Court proceedings without any advertisement in that regard, and further oral direction of an Court law to further negotiation outside the Court.

11. The matter was therefore directed to be placed before the Judge who had passed the earlier order. The Hon''ble Company Judge by means of the order dated 28.3.2001 has again recorded that the auction done by the Official Liquidator was already been approved vide order dated 13.5.2008 without reflecting upon the procedure adopted. This Court being a Court of concurrent jurisdiction cannot express any further opinion on the order which have been so passed in the matter by the Company Court. However, I am of the opinion that following questions of law do arise in this company petition which need to be answered by a larger Bench.

(a) Whether there can be sale of immovable property of a company under liquidation without advertisement in newspapers/website etc. inviting bids from the prospective buyer by private negotiation with the buyer of the plant and machinery only because the Official Liquidator has pointed out certain difficulties in removal of the plant and machinery after sale in his favour?

(b) Whether the Company Court can permit sale of immovable property which had not been advertised for sale at any point of time by private negotiation during Court proceedings between Official Liquidator and the purchaser of plant and machinery only?

(c) Whether after close of the sale of the property under an order in writing of the Company Court, there can be an oral order by the Company Court to the Official Liquidator to further negotiation with the buyer privately for increase of the sale price?

(d) Whether the Company Court can refuse to revise/review the earlier orders even if made contrary to law on the ground that the auction/sale had already been approved?

List this matter before Hon''ble the Chief Justice for constituting a larger Bench for the purpose.

List this petition after the questions are answered.