

(2016) 06 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 189 of 2012

Continental Heating and Air Conditioning Systems

APPELLANT

Vs

Industrial Development Corpn.

RESPONDENT

Date of Decision : 27-06-2016

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 103
State Financial Corporations Act, 1951 — Section 29

Citation : (2017) AIR(J&K) 48

Hon'ble Judges : Mohammad Yaqoob Mir, J.

Bench : Single Bench

Final Decision : Allowed

Judgement

,

Mohammad Yaqoob Mir, J.—For sale of the assets of M/s. Megabyte Electronics (P) Ltd. Industrial Complex, Rangreth, under Section 29 of",

SFC Act, 1951, auction notice has been issued from the office of Jammu and Kashmir State Industrial Development Corporation Limited,",

Srinagar, by Manager, Development Banking, mentioning therein that J & K SIDCO as a secured creditor and having first charge on the assets of",

M/s. Megabyte Electronics (P) Ltd. Industrial Complex, Rangreth, invites offers for transfer of lease hold rights of 3 (three) kanals of land leased",

to M/s. Megabyte Electronics and outright sale of buildings, plant and machinery and other fixed assets existing there upon. The interested buyers",

have been asked to submit their offers in a sealed cover, super-scribed ' offer for purchase of the assets of M/s. Megabyte Electronics (P) Ltd.",

Industrial Complex, Rangreth' ?. The reserve price for bid has been mentioned as Rs. 49.70/- lacs. The auction was subject to terms and",

conditions as incorporated in the auction notice.,

2. Petitioner has responded and has offered Rs. 51.3/- lacs. The requisite CDR amounting to Rs. 5.00/- lacs bearing No. 2103181 dated 8-10-,

2011 pledged to Senior Manager, J & K SIDCO has been submitted. In response whereof, General Manager (DB) conveyed to the petitioner",

that his offer is under active consideration and the formal acceptance shall be communicated within a weekâ?" s time.,

3. A notice has been published in a daily newspaper by the General Manager (DB) notifying therein that the Corporation has received single offer,

against auction notice. The offer amount for the mortgaged assets of the mortgaged company is Rs. 51.03/- lacs against the reserve price of Rs.,

49.70/- lacs. It is also mentioned in the notice that the Corporation is finalizing auction of assets belonging to M/s. Megabyte Electronics Pvt. Ltd.,

Rangreth, Srinagar, to the single offer i.e. petitioner. It has also been mentioned that objections, if any, from the original promoters of M/s.",

Megabyte Electronics Pvt. Ltd. or any interested individual/company may be communicated within seven days from the date notice is published in,

the newspaper.,

4. When no objection was received, it was conveyed to the petitioner by Manager (DB) that his offer for purchase of assets including transfer of 3",

kanals of land on lease hold basis has been accepted by the Corporation subject to the terms and conditions incorporated in the letter of,

acceptance bearing No. SIDCO/DB/CO/R-300/1502-10 dated 10-12-2011. The terms and conditions read as under :,

(1) That the Wave Soldering Machine being auctioned separately belonging to M/s. Megabyte Electronics Rangreth having minimum value of Rs.,

4.50/- lacs has also to be purchased by you, in case the Corporation does not receive any offer or the offer amount is less than the minimum value",

of the said machinery after putting the same to auction for which you have to furnish the undertaking duly notarized from the Court of law.,

(2) That the premises shall be utilized for bona fide industrial activity only having duly registration by the concerned agencies in accordance with the,

lease deed to be executed by you with the Corporation after depositing entire bid amount.,

(3) That the 50% of the bid amount of Rs. 51.03/- lacs shall have to be

deposited by you with the Corporation within the period of 10 days from, the date of issue of this acceptance letter. The balance 50% of the bid amount less by CDR amount of Rs. 5.00 lacs deposited with Corporation, shall have to be deposited by you within 90 days from the date of issue of this letter or at the time of taking over the possession but not earlier than, 21 days.,

(4) After depositing the entire bid amount and before taking over the possession of the assets of the unit you have to execute the lease deed with,

Corporation for remaining period of lease for 3 kanals of land and sale deed for building plant and machinery and other misc. fixed assets lying in, the premises of the unit.,

(5) In case you do not deposit the 50% of the bid amount as mentioned at S. No. 3 above, it will be deemed that you are not in agreement with",

the conditions laid down herein above and the acceptance letter of this Corporation shall stand withdrawn.' ?,

5. Petitioner in response to the letter dated 10-12-2011, vide letter No. CHAC/CH-623/2011 dated December 15, 2011, submitted the cheque",

bearing No. 36780877 dated 15-12-2011 for an amount of Rs. 25,51,500/- being 50% payment with a further submission that the lease/sale",

deed is being prepared in consultation with legal experts of the company.,

6. The respondent Corporation vide letter dated 16-12-2011 has acknowledged the receipt of Rs. 25,51,500/- in the shape of cheque being 50%",

of the bid amount. The receipt No. 483 dated 15-12-2011 in original has been sent to the petitioner. Petitioner has been requested to approach,

Manager Estates, Rangreth and Manager Legal for execution of lease deed and sale deed immediately so as to formally handover the possession",

of the assets to the petitioner after receiving the balance bid amount.,

7. Again vide letter dated 2-1-2012, respondent Corporation has conveyed it to the petitioner that the Corporation has approved the sale of",

Wave Soldering machine having dimensions of 378 mm x 483 mm x 280 mm, Model Electovert ULTPK, manufactured by M/s. Western Dynex",

of USA, year of manufacture 1988 at a consideration of Rs. 4.50/- lacs being the minimum value. This amount be paid in one go while making the",

remaining 50% balance payment to the Corporation for the assets of M/s. Megabyte Electronics (P) Ltd. and to execute the sale deed for transfer,

of building, plant and machinery item under reference before formally handing over the same to the petitioner after making the entire due payment.",

8. Petitioner on 9-2-2012 has sent cheque bearing No. 36780889 amounting to Rs. 25,51,500/- to be credited in favour of J & K SIDCO,"

Srinagar, under Account No. Sb-7379 being operated at J & K Bank, Solina Srinagar, with a further mention that the amount being balance",

payment for purchase of assets/03 kanals of land of M/s. Megabyte Electronics, same has been received by the respondent Corporation. Then the",

petitioner has conveyed to the authorities of the respondent Corporation that the total payment amounting to Rs. 55,53,000/- including cost of",

Wave Soldering machine amounting to Rs. 4.50/- lacs has been made, therefore, Corporation may proceed further in the matter in the best",

interests of both the parties.,

9. Petitioner again conveyed it to the respondent Corporation on February 17, 2012 that the entire amount has been deposited, therefore, orders",

be issued to the concerned for execution of sale deed for building, plant, machinery and other fixed assets and lease deed for remaining period of",

lease for 3 kanals of land with a further information that the petitioner has taken steps or manufacturing/assembling of boilers in collaboration with,

thermosaver boilers from U.K. and the requisite site stand shown to them, any delay may cause heavy loss to the petitioner company.",

10. When the petitioner could not get any response, he filed the instant writ petition. Vide order dated 24-2-2012, present status of subject matter",

of the writ petition was directed not to be changed. The respondents were given time to file reply which they did not but on 13th June, 2012, it was",

pointed out that the allotment order has been re-called by the respondent and in view of this development, by the same order, petitioner was",

allowed to amend the petition which has been amended and said re-call order has been challenged.,

11. It transpired that the respondent Corporation vide communication No. SIDCO/DB/CO/R-300/136-138 dated 21-2-2012, are shown to have",

informed the petitioner that the acceptance of offer made by him vide letter dated 10-10-2011 for purchase of assets of M/s. Megabytes,

Electronics Pvt. Ltd. Rangreth, Budgam, conveyed vide letter No. SIDCO/DB/CO/R-300/1502-10 dated 10-12-2011 followed by letter No.",

SIDCO/DB/CO/R-300/1534-40 dated 16-12-2011 and letter No. SIDCO/DB/CO/R-300/1583-88 dated 2-1-2012, is recalled, withdrawn",

and be treated as cancelled.,

12. In the amended petition, petitioner has sought issuance of writ of certiorari for quashing communication bearing No. SIDCO/DB/CO/R-",

300/136-138 dated 21-2-2012 with a further prayer for issuance of Writ of Mandamus so as to direct the respondents to execute sale deed/lease,

deed in favour of the petitioner.,

13. In the reply filed by the respondent corporation aforesaid position has not been denied but it has been pleaded that the matter was taken up in,

the Board meeting and discussed under Agenda Item No. 132.17 and in furtherance of the Policy Decision, the Board of Directors of the",

respondent Corporation in its 132nd Board Meeting held on 26-6-2012, has taken the following decision :",

' The Board noted the progress of taken over cases including sale/disposal of two defaulting units viz. M/s. Mesco Laboratories Pvt. Ltd.,

Khunmoh and M/s. Tengem Components Ltd. Rangreth under the relevant provisions of the SFC Act.,

The President FICK raised the issue of one taken over case viz. M/s. Megabyte Electronics Ltd. Rangreth. The Managing Director informed that,

the matter is sub-judice and also briefed about the circumstances leading to the cancellation/ withdrawal of the entire auction sale proceedings ab-,

initio because of the principal loan of the original defaulting company being more than the accepted offer from the auction purchaser.,

During deliberations it was suggested that in case the auction purchaser agrees to raise his bid offer to the minimum extent of principal loan,

outstanding, the same can be considered, however, subject to the withdrawal of the Court case.' ?",

14. It is further pleaded that in terms of communication No. SIDCO/DB/R-300/98-99 dated 21-7-2012, petitioner was informed about the said",

decision of Board of Directors of the respondent Corporation. It has also been mentioned in the said communication that principal loan outstanding,

against M/s. Megabyte Electronics is Rs. 90.79 lacs (Rupees ninety lac seventy-nine thousand). Petitioner has not responded to the said letter,"

obviously in view of pendency of writ petition.,

15. The first contention of counsel for the respondents is that the petition, in essence and substance, seeks enforcement of a contract which is",

required to be settled by ordinary principles of law of contract otherwise being a matter in the realm of private law cannot be subject matter of a,

writ petition. Further the writ petition is not maintainable because it raises disputed questions of fact.,

16. Main plank of the argument of the counsel for the respondents is that the auction notice dated 24-9-2011 as well as other communications,

referred to above being in tangent with the mandate of law rendered on the exercise of power as by law vested in the Financial Corporations under,

Section 29 of the Act as also directions made for sale of properties by recourse to Section 29 and also because of circumstances detected and,

discovered by the Finance and Legal Departments of the respondent Corporation on in-depth scrutiny of the relevant records in the course of,

completion of legal formalities required to be completed in law so as to conclude the proceedings initiated in the matter under Section 29 of the,

SFC Act to liquidate the liabilities on account of the loan amount outstanding against M/s. Megabyte Electronics Pvt. Ltd.,

17. It is also contended by learned counsel for the respondents that in view of Section 3 of the Jammu and Kashmir Migrants (Stay of,

Proceedings) Act, 1997, the Board of Directors of the respondent No. 1, took a policy decision in 124th meeting under Agenda No. 124.06",

which is as under :,

' In case of Migrant units, a proposal should be framed by the corporation for seeking the relief from Government of India to the extent of",

loan/interest involved as the recovery process has been stalled under Migrant Act issued by GOI. The proposal so drawn should be submitted to,

the State Govt. through Principal Secretary I & C Deptt. for onward transmission to G.O.I.' ?,

18. In the reply it is pleaded that the principal amount recoverable from M/s. Megabytes Electronics Pvt. Ltd. is Rs. 90.79/- lacs. As against the,

said principal amount, the sale by auction has fetched total price of Rs. 51.03/- lacs. The waiving off/granting remission of interest component of",

the loan amount is within the competence of respondent No.1 but so far as the principal amount of the loan is concerned, the granting of remission",

and/or accepting the bid at the sale by public auction below par the principal loan amount is not legally permissible except with the prior,

concurrence/approval of the Reserve Bank of India.,

19. Learned counsel for the respondents while referring to paras 17 and 18 of the judgment reported in 1993 (2) SCC 279 : (AIR 1993 SC 935),",

para 14 of the judgment reported in 2002 (2) SCC 496 : (AIR 2002 SC 834) and (2011) 4 SCC 171 : (AIR 2011 SC 1388), contended that the",

Hon'ble Supreme Court in the matter of sale under Section 29 of the Act has enjoined that the Financial Corporations must act fairly and,

reasonably to secure the best price for the property to be sold.,

Fair market value (say Rs. 38,20,000 for

structure)", "= Rs. 38,17,500+Rs. 8750

Total value of leased land,"= Rs. 9,00,000

Total depreciated value of machinery,"= Rs. 4,50,000

Total,"= Rs. 51,70,000

petitioner and accepted by the respondents, the question of asking the petitioner to raise his bid offer to the minimum extent of principal loan",

amount outstanding, shall be sort of coercion. Contract is a concluded one, respondents shall have no option but to execute the requisite",

documents.,

25. The contract being a concluded one, execution of lease deed vis-a-vis land and the sale deed vis-a-vis building, plant and machinery was",

simply formality. The valuation of the property belonging to M/s. Megabyte Electronics Pvt. Ltd. which was auctioned, was got done by the",

respondent Corporation itself through an approved valuer and the valuer has given the actual value as already referred to in para 24. Thereafter,

petitioner had been asked to purchase the machinery worth Rs. 4.50/- lacs which he has accepted and in total he has deposited Rs. 55.53/- lacs,"

which amount, admittedly, is still lying with the respondent Corporation. The fact that the principal amount of loan is Rs. 90.79/- lacs, that is none",

of the responsibility of the petitioner. When property, on the own showing as exist on spot, was worth Rs. 49.70/- lacs, how could a person be",

asked to pay some amount around Rs. 90/- lacs. The respondent corporation may have other remedies available for recovering the balance,

amount from the defaulter but for that petitioner cannot be made to suffer.,

26. The object of auction is that it must fetch the amount not less than the reserve price but must fetch maximum price above the reserve price.,

None except the petitioner responded and offered more than the reserve price which was consciously accepted by the respondents. In addition,

thereto, after the price was offered by the petitioner, it had been notified to the owner M/s. Megabyte Electronics Pvt. Ltd. who have not",

responded. It had also been published in the newspaper but none objected about the price offered by the petitioner nor any one has volunteered to,

offer more than what petitioner has offered. It is only in the said background, respondent Corporation consciously accepted the offer of the",

petitioner and letter of acceptance was sent to the petitioner with a condition to purchase Wave Soldering Machine worth Rs. 4.50/- lacs, which",

condition too has been satisfied by the petitioner.,

27. In the final analysis, for the stated reasons and the facts, respondents are legally obliged to execute the requisite documents in favour of the",

petitioner, which they must do within a period of four weeks from the date copy of this order is served upon them. In default, respondent",

corporation shall refund the amount Rs. 55.53/- lacs as deposited by the petitioner with it along with interest @ 12% per annum from the date of,

deposit till final payment and shall also pay cost of litigation quantified at Rs. 50,000/- (Rupees fifty thousand).",

28. Petition succeeds,shall stand disposed of as above along with connected CMPs.",