

(2011) 02 GUJ CK 0061
In the Gujarat High Court

Case No : O.J. Appeal No. 75 of 2010 in Official Liquidator Report No. 66 of 2010
in Official Liquidator Report No. 227 of 2008

Crystal Equities Limited

APPELLANT

Vs

Official Liquidator of Gujarat Small Industries Corp. Ltd. and
Others

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Citation : (2011) 02 GUJ CK 0061

Hon'ble Judges : Jayant M. Patel, J;J.C. Upadhyaya, J

Bench : Division Bench

Advocate : Bhash H. Mankad, for the Appellant; Official Liquidator for Opponent 1 and Ameer Yajnik, for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The present appeal arises against the order dated 1.10.2010 passed by the learned Company Judge in OLR No. 66/2006, whereby the direction has been issued for forfeiture of the EMD of the Appellant herein, who was one of the offerers before the Sale Committee as well as before the learned Company Judge.

2. The relevant facts appear to be that for the properties of M/s. Gujarat Small Industries Corporation Limited (hereinafter referred to as "the Company in liquidation" for short), steps were taken by the Official Liquidator (OL) for realization of the money by sale of the properties. Out of various lots, for Lot No. III, the Appellant together with the other officers, in response to the advertisement issued by the OL, had submitted offer. At the relevant point of time, the EMD was of Rs. 7 lac and when the report was submitted before the Company Court for confirmation, the highest offer submitted by the Appellant was of Rs. 1.43 crore for Lot No. III of the properties of the Company in liquidation. Since we are not much concerned with the other properties comprising of different lots, except Lot No. III, the said aspect would not be

much relevant, save and except while dealing with the contentions of the learned Counsel for the Appellant, as and when required.

3. It appears that thereafter, the OL submitted the report for confirmation of the offers of various Lots being OLR No. 66 of 2010. Such aspects came to be considered by the learned Company Judge on 20.8.2010 and the learned Company Judge found that so far as Lot No. III is concerned, the offer was quite low and, therefore, the Court had shown disinclination to confirm the same, but further directed the OL to issue a fresh advertisement essentially with a view to make one more attempt to invite higher offer than the offer received of Rs. 1.43 crore of Lot No. III. It appears that thereafter the OL, pursuant to the said order dated 20.8.2010 for Lot No. III issued advertisement and intimated to the existing officers also. Thereafter, when the matter once again came up for hearing before the learned Company Judge on 1.10.2010, it was found that there was no offer coming forward. Therefore, the only highest offer remained was as that of the Appellant and the second highest offer was as that of Mr. M.S. Lohar of Rs. 1.42 crore for Lot No. III. Since the Appellant herein declared before the learned Company Judge that the Appellant was not interested in purchasing the property, the Appellant withdrew the offer by backing out from the offer. Under these circumstances, the learned Company Judge directed for forfeiture of the EMD of the Appellant and confirmed the next offer of Rs. 1.42 crore of Mr. M.S. Lohar. The Appellant has no object so far as the confirmation of the offer of Mr. Lohar at Rs. 1.42 crore is concerned, however, since the learned Company Judge directed for forfeiture of the EMD of the Appellant, the present appeal before us.

4. We have heard Mr. Unwala, learned Counsel appearing with Mr. Bhash Mankad for the Appellant.

5. The first contention raised by the learned Counsel for the Appellant is that the learned Company Judge, when passed the order on 20.8.2010 in OLR No. 66 of 2010 for Lot No. III, his offer was not confirmed and, therefore, it can be said as the offer not accepted and in the submission of the learned Counsel for the Appellant, as the learned Company Judge directed for issuance of fresh advertisement, it can be said that a fresh advertisement de novo was ordered and the earlier process undertaken for inviting offers and the offers so submitted stood cancelled. In furtherance to the submission, the learned Counsel attempted to rely upon the observations made by the learned Company Judge at paragraph 5 in the order dated 20.8.2010.

6. Prima facie the contention appears to be attractive, but upon close scrutiny, it appears that the same is misconceived and even not on a correct factual premise. In the order dated 20.8.2010 passed by the learned Company Judge, in OLR No. 66/2010 at paragraph 5, it was, inter alia, observed as under:

5. So far as Lot No. III is concerned I.e. Leasehold land of Plot No. 1011 approximately 5000 Sq. Mtr. (remaining leasehold period as on 31.03.2010 - 83

years Approx.) situated at GIDC Industrial Estate, Ankleshwar, Dist. Bharuch, there are two bidders before the Court. Except them, no other bidder has come forward. The second highest bidder has expressed its inability to make any further offer. The offer of the first highest bidder before the Sale Committee appears to be quite low and hence, the Court is not inclined to confirm the same in favour of M/s. Crystal Equities Limited. The Official Liquidator is, therefore, directed to issue a short advertisement fixing the upset price of Rs. 1.43 Crores and EMD at Rs. 15 Lacs. The inter-se bidding for Lot No. III will take place before the Court on 03.09.2010. If any one is interested to participate in the inter-se bidding, they should remain present only after payment of EMD and late entry charges, if any.

7. The aforesaid order has to be read conjointly and it cannot be read in isolation as sought to be canvassed. The aforesaid order makes it clear that the Court did show disinclination to confirmation the offer at that stage, but simultaneously directed the OL to issue a fresh advertisement as mentioned in the order. The Court did not finally decide not to confirm the offer, but since the offer of the first highest offerer i.e. the Appellant herein before the Sale Committee was found by the Court, at that stage, low, by way of an attempt to invite additional offers, subsequent directions were issued. The aforesaid aspect is apparent from the paragraph 11 of the very order, wherein the learned Company judge has observed as under:

11. For Lot No. III, the matter is adjourned to 03.09.2010.

8. Meaning thereby, the Court did not conclude the question of confirmation or non confirmation of the offer for lot No. III, but kept the matter pending to be considered after the advertisement as ordered was issued and the response thereof was placed before the Court. Therefore, the contention of the learned Counsel cannot be accepted and is on factually incorrect premise. Hence, deserves to be rejected.

9. The learned Counsel next contended that since in the very order at paragraph 9 the learned Company Judge had directed for return of the EMD to the unsuccessful bidders, the intention of not to confirm the offer of the Appellant was apparent. In our view, such contention is also not only misconceived, but can also be said as misdirected. The direction issued at paragraph 9 in the said order is because of the fact that qua Lot No. V, offer of one party was accepted and the offers of the other parties were not accepted and, therefore, the Court had to direct for return of EMD. Had the Court intended for return of EM Ds of all the bidders of all lots, the direction at para 11 would not have been there that for Lot No. III, the matter was adjourned to 3.9.2010. Under these circumstances, the contention cannot be accepted.

10. The learned Counsel next contended that the Condition No. 27 would not invest the power for forfeiture of the deposit under the present circumstances and, therefore, the learned Company Judge could not have directed for forfeiture

of the deposit.

11. In order to consider the submission, Condition No. 27 would be relevant and the same reads as under:

27. The offer shall not be entitled to withdraw or cancel his offer once submitted. If the offerer withdraw or cancel his offer the Earnest Money Deposit shall be liable to be forfeited and he will also be liable to pay to the Official Liquidator the loss, damage suffered consequent upon his backing out of their offer. The property/assets in question will then be re-sold at the risk and consequences of the offerer.

12. The aforesaid condition makes it abundantly clear that if the offerer withdraws his offer, the earnest money deposit will be liable to be forfeited and he will also be liable to pay OL, the loss or damages suffered consequent upon his backing out from his offer. It appears that so far as backing out from the offer is concerned, the learned Company Judge has observed at paragraph 4 as under:

4. Since there are only two bidders namely; M/s. Crystal Equities Limited and Shri M.S. Lohar, the Court has asked the parties to make their offer, Mr. Shalil Thakore, learned Advocate appearing for Ms. Megha Jani for M/s. Crystal Equities Limited has submitted that his client is not interested in purchasing the property in question as the responsible person of the said party is suffering from paralysis. Hence, he submitted that his client is not interested in purchasing the property in question of the Company in liquidation. He has, therefore, requested that the EMD amount paid by the said party may kindly be given back.

13. On the aforesaid aspect, there is no dispute by the Appellant that he did withdraw the offer.

14. If the circumstances as stated in aforesaid paragraph 4 of the order of the learned Company Judge is concerned with Condition No. 27, it cannot be said that it would not attract the forfeiture of the deposit as sought to be canvassed and contended.

15. In view of the above, we find that the appeal is meritless and hence, deserves to be dismissed. Therefore, dismissed.