(2013) 11 DEL CK 0116

In the Delhi High Court

Case No : Co. Petition No. 39 of 2009 and Co. Application No''s. 1500, 1913 and 1914 of 2013

Dinesh Mittal and Others APPELLANT

Vs

M/s. Triveni Infrastructure Development Co. Ltd. RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:
Companies Act, 1956 — Section 446(1)
Land Acquisition Act, 1894 — Section 6
Negotiable Instruments Act, 1881 (NI) — Section 138
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 29

Citation : (2014) 2 AD 47

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Advocate : Sarat Chandra, Mr. Sachin Chandra, in CP 333/2010 and creditors in CP 39/2009 and Mr. Amit Gaurav, for the Appellant; Harish Malhotra Mr. Sanjay S. Chhabra, for Ex-Director, Triveni Infrastructure, Mr. Sachin Chopra, Manish Jain for TFAA. Land Auctioneer Officer, Faridabad, Mr. Rajiv Bakshi, (Mr. Sachin Duggal applicant) in CA 2176/2013, Mr. Jay Savla, along with Mr. Prabhat K.C., Amrita Mishra, Mr. M.N. Das, Regional Manager, SICOM Ltd., Mr. Jitender Gupta, Mr. Rakesh Tiku Mr. Abhinav Bajaj, for R-2, Mr. Rajiv Bahl and Mr. Ashish Makhija, Advocates for Official Liquidator, for the Respondent

Final Decision : Disposed Off

Judgement

R.V. Easwar, J.

CO. APPL. No. 2176/2013

1. This is an application filed by Mr. Sachin Duggal seeking release of the original documents annexed with Company Application No. 1331/2013 in Company Petition No. 39/2009. Company Application No. 1331/2013 was disposed of on 06.08.2013 with liberty to the applicant to file reply and also to apply for condonation of delay in case there was any delay. Pursuant to this order the applicant filed CA No. 1590/2013 seeking condonation of delay which was

allowed.

2. All the original documents annexed in Company Application No. 1331/2013 are listed in para-4 of the application. Since that application was already disposed of by this Court by orders dated 06.08.2013 and 11.09.2013, the original documents are no longer required by this Court.

3. In these circumstances, the original documents are directed to be returned to Mr. Amit Mittal who is the GPA of the applicant. This may be done within two weeks from today.

The application stands disposed of.

CO. APPL. No. 1500/2013

4. This is an application filed on behalf of the OL. The following prayers are made:-

i) Directions may be issued to Land Acquisition Officer, Urban Estate, Faridabad (Haryana) to deposit the entire amount of Compensation determined vide award No. 24, 25 & 27 with this Hon''ble Court;

ii) The directions may be issued to the Land Acquisition Officer, Urban Estate, Faridabad (Haryana) to give details of the amount of Compensation payable qua the land owned by Smt. Bati Devi as stated in para 16 herein above;

iii) Pass an order directing the Respondent No. 2 legal heir of late Smt. Bati Devi to refund the amount of Rs. 1,30,04,125/- received as part consideration or in the alternate deduct the same from the amount payable as per above;

iv) Pass an order permitting the official liquidator to appear before the ADJ Faridabad on behalf of the company and raise objections to those proceedings in terms of section 446(1) of the Companies Act, 1956.

v) Pass an order permitting the OL to make a reference before the LAC for the enhancement U/s. 18 of the Compensation payable to the company (In liqn.); and;

vi) Pass such other order/orders which may be deemed fit and proper.

GENESIS OF THE APPLICATION

5. M/s. Triveni infrastructures Development Company Ltd. (hereinafter referred to as the "Company") is the company under provisional liquidation in the company petition. By order dated 22.03.2012, the OL attached to this Court was appointed as the provisional liquidator of the company. He was, however, directed not to take possession of the assets of the company until 21.04.2012. Subsequently, a scheme for revival of the company was filed but it was dismissed by this Court by order dated 17.10.2012 and the provisional liquidator was directed to take possession of the assets and records of the company. In an application filed by the provisional liquidator in Company Appeal No. 94/2012, a

Division Bench of this Court by order dated 11.07.2013 clarified that the proceedings before the company court were not stayed and the company court was entitled to pass appropriate and required orders. It was also clarified by the Division Bench in the aforesaid order that so far as possession of the lands and properties of the company is concerned, the same will remain with the provisional liquidator.

6. In the course of the proceedings before the Division Bench in Company Appeal No. 94/2012, it appears to have been brought to the notice of the Court on behalf of the ex-management of the company that some land belonging to the company at Faridabad, Haryana was acquired by the Government of Haryana in respect of which compensation was yet to be received by the company. This is noted by the Division Bench in its order dated 11.02.2013. Pursuant to this disclosure, the provisional liquidator wrote letters on 14.05.2013 and 24.07.2013 to the Land Acquisition Officer, Urban Estate, Faridabad, Haryana (hereinafter referred to as the "LAO") requesting him to furnish the complete details of the land acquired by him and also requested for payment of the compensation. It would appear that LAO had filed a certificate to the effect that an amount of Rs. 23,50,46,995/- is lying with him as compensation for land of the company which was acquired.

7. At this juncture it is relevant to refer to the events leading up to the acquisition of the land and the issue of the certificate by the LAO. The company purchased land measuring 7 acres, 1 kanal and 19 marlas situated in village Bhatola, Tehsil and District Faridabad, Haryana from one (Late) Smt. Bati Devi under sale deed bearing Vaiska No. 1586 dated 27.04.2006 for a total consideration of Rs. 6,30,20,625/-. Part consideration was paid by the company by six different cheques but due to insufficiency of funds in the account of the company, only two cheques amounting to Rs. 1,30,04,125/- were honoured and the rest of the cheques for the aggregate amount of Rs. 5,00,16,500/- were not honoured. Thus, a large amount of consideration thus remained unpaid. The sale deed was, however, registered and the name of the company was also recorded in the revenue records and the mutation of the land was done in the name of the company. The legal representatives of Smt. Bati Devi filed a suit for declaration and cancellation of the sale deed dated 27.04.2006. The sale deed was cancelled under a compromise and a consent order was passed in terms of the compromise on 28.05.2008 by the Court of Civil Judge, Faridabad. Under the compromise, it was agreed that the company will pay the balance sale consideration in instalments, failing which the sale deed would be deemed to have been cancelled. The company, however, could not pay the balance sale consideration. The cancellation of the sale deed was, however, not got recorded by Smt. Bati Devi in the revenue records and, therefore, the mutation in the revenue record continued to remain in the name of the company. These facts have been confirmed by Shri Dharam Singh the legal heir of Late Smt. Bati Devi and Madhur Mittal, the ex-director of the company who are personally present in Court.

8. Vide notification No. LAC(F)-2009NTLA/918 dated 06.02.2009 issued u/s 6 of the Land Acquisition Act, the LAO acquired the land and passed award Nos. 24, 25 and 27 and consequently apportioned the entire compensation for the land, inclusive of the land belonging to Late Bati Devi, to the company in provisional liquidation. The company, however, did not get the compensation amount which is still lying with the LAO.

9. By letter dated 22.07.2013, Madhur Mittal, the ex-director of the company informed the OL that the compensation amount payable to the company has been attached vide order dated 01.03.2011 passed by the Court of Shri Lokesh Gupta, Judicial Magistrate, First Class in complaint No. 449 filed by Late Smt. Bati Devi against the company. The aforesaid Court took the view that if the compensation amount reaches the company, the whole of it might be utilised by the company jeopardising the interest/rights of Smt. Bati Devi.

10. On 26.08.2013, the OL filed the present application.

PROCEEDINGS BEFORE THIS COURT ON 26.09.2013 AND 30.10.2013

11. In the course of the hearing of the present application it transpired that SICOM has also laid a claim to the amount of compensation as a secured creditor having a charge over a part of the land acquired by the LAO. Therefore, on 26.09.2013 and 30.10.2013 when this application was taken up, it was opposed by SICOM. It was pointed out on its behalf that several orders of attachment have been passed by DRT, Delhi attaching the compensation and that SICOM being a secured creditor, Section 29 of the RDDB Act, 1993 was applicable. It was further submitted on the basis of several judgments of Supreme Court that SICOM being a secured creditor and having stood outside the liquidation proceedings, was entitled to enforce its charge over the land and consequently also get the compensation monies from the LAO in discharge of the amounts due to it. It was accordingly prayed on behalf of SICOM that the compensation monies should not be directed to be given to the applicant (the Official Liquidator), but should be directed to be paid to SICOM in partial discharge of the monies due to it by the company. The learned counsel for SICOM handed over to this Court copies of some of the orders of the Debt Recovery Tribunal, Delhi (DRT) showing that there was an attachment by the DRT on the amounts lying with the LAO. The amount of the debt, as certified by the recovery certificate No. 142/2010 of the DRT, due and payable to SICOM by the company in provisional liquidation is approximately Rs. 72,66,00,000/-. This Court directed the OL to examine this aspect and file a status report. In compliance with the order passed by this Court on 26.09.2013, the OL filed status report No. 786/2013.

12. Dharam Singh, the legal representative of Late Smt. Bati Devi, in his reply to the application, stated that the company has undoubtedly defaulted in paying the balance of the sale consideration, but with a view to putting a quietus to the disputes pending between the parties, and to avoid any further delay with

consequential loss of interest, he was agreeable to receive an amount of Rs. 5,85,16,500/- in full and final settlement of the amount due to him from the company. He also undertook to take all steps for withdrawal/compounding of the pending complaints, including the complaint u/s 138 of the Negotiable Instruments Act and FIRs registered against the company and its management. He also undertook to apply for withdrawal of the attachment orders. After some arguments, the learned counsel for the SICOM also put forth certain proposals for the amicable settlement of the disputes between the parties, having regard to the delay with consequential loss of interest to all the parties concerned. After hearing the proposals put forth by the parties, this Court passed on order on 31.10.2013 as follows:

After some arguments by all the parties concerned, some proposals were made by the parties. They seek time to work out these proposals.

SETTLEMENT BETWEEN SICOM & EX-MANAGEMENT:

13. Pursuant to the above order passed by this Court, a joint meeting of SICOM and the erstwhile management of the company was convened in the office of Official Liquidator. SICOM and the ex-management entered into a term sheet on 21.11.2013 setting out the terms and conditions of the settlement between the parties. A copy of the term sheet is annexed to report No. 873/2013 filed by the Official Liquidator. The gist of the settlement is as under:

i) SICOM is in-principle agreeable for modification of the Recovery Certificate and has agreed to claim 10% simple interest (S.I.) instead of 19.50% interest as awarded by the Debt Recovery Tribunal vide R.C. No. 142/10 and confirmed by the Hon''ble Division bench of Hon''ble High Court of Delhi vide order dated 15.11.2010 and subsequently also confirmed by the Hon''ble Supreme Court of India vide order dated 04.01.2011.

ii) Thus the outstanding amount payable to SICOM in terms of the proposed settlement [being calculated at 10% simple interest instead of 19.50% interest with quarterly rest as awarded by DRT] will accordingly stand reduced from Rs. 72.66 Crores to Rs. 37.45 Crores as per the calculation sheet.

iii) SICOM Ltd. is agreeable to receive the aforesaid amount of Rs. 37.45 Crores in full and final settlement of all their claims from the Company subject to the following:-

a) That the amount of Rs. 18.0 Crores be released in favour of SICOM in the following manner and not later than 31st December, 2013;

b) Balance amount of Rs. 19.45 Crores will be paid to SICOM by the Company within a period of 15 months i.e. not later than 31st March, 2015 [Rs. 6.83 Crores principal amount and Rs. 12.62 Crores interest upto 31.03.2015 being calculated at 10% simple interest instead of 19.5% interest with quarterly rest as awarded by DRT] subject to further extension of three months i.e. upto 30.06.2015 for which three month contractual interest i.e. 19.50% DRT] subject to further extension of three months i.e. upto 30.06.2015 for which three month contractual interest i.e. 19.50% rest quarterly on the balance principal amount will be payable as per the calculation sheet.

c) The interest calculation is subject to actual computation and reconciliation.

PROCEEDINGS BEFORE THIS COURT ON 28.11.2013 (REPORT No. 873/2013)

14. On this date when the matter was taken up, report No. 873/2013 was filed by the Official Liquidator setting out the settlement entered into between SICOM and the ex-management and also containing the views of the Official Liquidator in the matter. In the said report, it was reported as under:

7. That in terms of order dated 31.10.2013 and upon receiving of aforesaid Term Sheet, a meeting was held in the office of Official Liquidator on 21.11.2013 wherein the senior officers of SICOM along with its advocate Sh. Jay Savla and Sh. Madhur Mittal, the ex-director of the Company (in provisional liquidation) along with his advocate Sh. Sanjay Chabra were present in the meeting. During the course of meeting both the parties reiterated that they shall abide by the terms and conditions stated in the Term Sheet. Further, it was also decided that the terms of the settlement as per the Term Sheet shall be binding upon the parties upon the approval of this Hon''ble Court. Copy of the minutes dated 21.11.2013 along with documents handed over by the SICOM and Sh. Madhur Mittal during the meeting are enclosed and marked as Annexure-C. Further, such a proposal based on the facts available and copies of documents/calculation sheet furnished by the ex-management will be beneficial for the Company in liquidation subject to approval of the Hon''ble Court.

8. That out of the funds lying with the Land Acquisition Collector (LAC) on account of Company in liquidation, an amount of Rs. 17,41,10,000/- shall be paid to the SICOM (Secured Creditor) and an amount of Rs. 5,85,00,000/- shall be paid to the legal heirs of Smt. Bati Devi and the balance shall be paid to the Official Liquidator.

a) Sh. Dharam Singh, legal heir of Smt. Bati Devi shall have no further claim, title, interest or right of any kind what so ever in the land in question.

b) The company in liquidation shall become the exclusive owner of the land.

c) The company in liquidation shall have the exclusive right to the application for enhancement of compensation before the appropriate authority.

d) Sh. Dharam Singh shall have no further claim in the said land in terms of the affidavit filed before the Hon''ble Court.

e) Sh. Dharam Singh shall move appropriate application before the Court of JMIC Faridabad to get the stay vacated for releasing the land compensation amount in favour of the official liquidator which has been attached vide order dated 28.5.2008.

f) SICOM (Secured Creditor) and the ex-management of the Company in liquidation shall execute such documents/forms as may be necessary to implement the terms and conditions stated in Term Sheet.

15. It was accordingly prayed by the Official Liquidator that the report may be taken on record and appropriate orders may be passed in Company Application No. 1500/2013.

16. On behalf of the erstwhile management, learned senior counsel submitted that the settlement arrived at between the parties would be beneficial to the company as also for the creditors and other stakeholders in as much as the company would be saving about Rs. 35 crores by paying Rs. 37.45 crores to SICOM as against the admitted liability of Rs. 72.66 crores. He submitted that the amount thus saved by the company would be available to the other creditors. He pointed out that at present, the compensation amount of Rs. 23 crores and odd was lying with the LAO without earning any interest which is not conducive to the interests of the company and the settlement between SICOM and the ex-management, if given effect to, would ensure that the amount would come into the hands of the Official Liquidator and will start earning interest which would be substantial. Learned senior counsel further points out that there is every possibility of the compensation amount paid @ Rs. 42 lakhs per acre (Approx.) would be enhanced, since similarly situated lands have fetched much higher compensation and such compensation has already been ordered. He submitted that if an appropriate application is made by the O.L., it is certain that the compensation for the lands in question would also be enhanced on the same basis as the similarly situated lands. He pointed out that the company itself had purchased a part of the land at Rs. 86 lacs per acre (Approx.) and this itself is sufficient indication of the likely enhancement which the LAO would order on the application to be made by the O.L.

17. The learned counsel for the SICOM highlighted the payment of Rs. 18 crores on or before 31.12.2013 in terms of clause 4(a) of the settlement. Once the payment of Rs. 18 crores is made as per the settlement, SICOM would withdraw all the 18 complaints. The remaining complaint will be withdrawn when the final payment is made in terms of the settlement. In terms of clause 8, it is pointed out, that once the full payment is made as per clause 4 of the settlement, the recovery certificate will stand satisfied and no further amount would be payable to SICOM by the company or the ex-management or the guarantors. The learned counsel also referred to clause 10 in which it was agreed upon that receipt of the initial amount of Rs. 18 crores before 31.12.2013, the insolvency notice issued by SICOM shall be withdrawn. Under clause 11, SICOM will also withdraw, on receipt of Rs. 18 crores, the petition filed against the company in the Punjab and Haryana High Court. Under clause 17, the SICOM will release the original title deeds of the land upon receipt of the full amount in terms of the settlement and will issue "no dues certificate" in favour of the company. The original title deeds will be deposited with the office of the O.L.

18. The learned senior counsel for Dharam Singh, the representative and the legal heir of late Smt. Bati Devi, stated that his client has no objection for the release of the compensation amount to the company in liquidation or to SICOM subject to the payment of the amount of Rs. 5,85,16,500/- to him out of the compensation amount presently lying with the LAO.

19. Mr. Rajiv Bahl, leaned counsel for the O.L. drew my attention to the report No. 873/2013 filed by the O.L. as well as the terms of the settlement reached between the ex-management and SICOM. He highlighted that not only the liability of the company to SICOM would be reduced by about Rs. 35 crores, which would be available for distribution to the creditors, workmen etc., but in case the settlement is approved, the compensation amount would come into the hands of the O.L. and would start earning interest immediately, augmenting the resources of the company and thereby bettering the chances of the creditors, workmen etc. He also emphasises that once the right to apply for enhancement compensation enures in the official liquidator and he makes an application to the LAO to that effect, there are good chances of the compensation getting enhanced on the basis of the compensation already ordered by the LAO in respect of similarly situated lands.

20. The LAO who is present today also broadly confirms the statements of the parties with respect to the enhancement of the compensation.

DECISION:-

21. I have taken note of the submissions made before me and I have anxiously considered them in the light of the settlement reached between SICOM and the ex-management of the company. The interests of the company in provisional liquidation is the paramount consideration. The interests of the contributories, creditors and other stake-holders have also to be taken into consideration in judging the appropriateness of accepting the settlement. Prima facie, on a fair reading of the terms of the settlement and after hearing the submissions of the parties, including those of the learned counsel for the O.L., it seems to me that the proposals are fair, reasonable and acceptable. SICOM has chosen to stand outside the liquidation proceedings. It approached the DRT and has also obtained orders of attachment of Rs. 21.2 crores (Approx.). Its total dues from the company is about Rs. 72.66 crores; under the terms of settlement it has agreed to reduce the dues to Rs. 37.45 crores. This represents almost 50% reduction in the liability of the company and would save approximately Rs. 35 crores to the company. The parties are right in pointing out that the resultant savings would be available for distribution amongst the other creditors, workmen, contributories etc. The proposal also has the advantage of the compensation monies being brought into the coffers of the company in provisional liquidation and once the amount is received from the LAO, it would start earning substantial interest. The interest amount would also enhance the resources of the company. Substantial savings would also result because of the reduction in the rate of interest agreed upon. SICOM has agreed to reduce the rate of interest from 19.50% to 10%

(simple). Once the LAO releases the compensation amount of about Rs. 23 crores and odd, the O.L. would be able to pay Rs. 18 crores to SICOM on or before 31.12.2013. There are sufficient safeguards in the terms of settlement protecting the rights of SICOM, which is a secured creditor. SICOM has also agreed to withdraw all the 18 complaints filed against the company u/s 138 of the NI Act under clause 7. The insolvency notice issued by it against the company will also be withdrawn. The petition filed by SICOM before the Punjab and Haryana High Court will also to be withdrawn. Moreover, the dispute pending between the company and the legal heir of Smt. Bati Devi would also come to an end, since the legal heir would be paid the amount of Rs. 5,85,16,500/- in full and final settlement towards the balance of the sale consideration for the land, interest etc. The legal heir has also undertaken to simultaneously withdraw all the pending complaints/litigation, FIRs, Section 138 complaints and attachment orders against the amount lying with the LAO.

22. In view of the above advantages, both monetary and with regard to the pending litigations/complaints etc., prima facie there appears to be nothing objectionable to the proposals made by the parties which have also been examined by the office of the O.L. The arrangement appears to be in the interest of the company in liquidation. I accordingly, issue the following directions:-

(a) The LAO, Urban Estate, Faridabad, Haryana, who is present in Court today is directed to release the amount of compensation determined under the awards Nos. 24, 25 and 27 with regard to the land owned by the company in provisional liquidation, i.e. Triveni Infrastructure Development Co. Ltd. The amount of compensation is directed to be released to the O.L. attached to this Court within one week from today.

(b) On receipt of the compensation amount by the LAO as per the above direction, the O.L. shall pay a sum of Rs. 5,85,16,500/- to Dharam Singh, legal heir of Late Smt. Bati Devi and also pay a sum of Rs. 17,41,10,000/- to SICOM in terms of clause 4(a) of the settlement. Both the payments shall be made simultaneously and within a period of one week after completion of the necessary formalities by Dharam Singh and SICOM in accordance with the settlement.

(c) Both Dharam Singh and SICOM shall take all necessary steps for vacating the attachment orders/injunctions passed in the proceedings pending between the parties.

(d) The O.L. shall make an application to the LAO for enhancement of the compensation amount determined under award Nos. 24, 25 & 27. The competent court shall decide the application for enhancement on merits and in accordance with law as expeditiously as possible and preferably within three months from the date of filing. If there is any delay in making the application by the O.L., the competent court shall sympathetically consider the application, if any, for condonation of the delay.

(e) SICOM shall take expeditious steps to get the attachments made by the recovery officer, DRT, Delhi lifted.

(f) CA No. 1289/2012 filed by a group of unsecured creditors before this Court is agreed to be withdrawn, as stated by Mr. Sarat Chandra, learned counsel for the applicant in the said application as well as for petitioner in Company Petition No. 333/2010. It is disposed of as withdrawn.

(g) The term-sheet/settlement executed between SICOM and the ex-management on 21.11.2013 shall form part of this order.

(h) All the parties to remain bound by their respective undertakings, assurances and arrangements.

(i) Any funds remaining with the O.L., after making payments, shall be kept by the O.L., in a fixed deposit for a period of one year to start with.

The application is disposed of in the aforesaid terms and directions. There shall be no order as to costs.

Order Dasti.