(2009) 03 DEL CK 0143

In the Delhi High Court

Case No : Co. App. No. 43 of 2004

Global Landcon Pvt. Ltd. APPELLANT

Vs

Nova Udyog Limited and Others RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Citation : (2009) 03 DEL CK 0143

Hon'ble Judges : Sudershan Kumar Misra, J;Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Chetan Sharma, Alok K. Aggarwal and Shipra Singh, for the Appellant; Sangram Patnaik, Shanta Pandey, Sanjeev Kumar for the IDBI, Indrani Mukherjee, for SCB and S.K. Luthra, for the Official Liquidator, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—A public notice was published in newspapers inviting bids for sale of land and building, plant & machinery, etc. belonging to M/s. Nova Udyog Limited (in liquidation) situated at Village Kamalu Ganj, Narsingh Talla, P.O. Lamachour Haldwani, Distt. Nainital, Uttaranchal by sealed tenders on "as is where is and whatever there is basis".

The reserved price for land and building of M/s. Nova Udyog Limited (in liquidation) was fixed at Rs. 1.60 crore while for its plant and machinery at Rs. 20.00 lakh. A prospective bidder could inspect the property. No details or area of the land was specified.

2. The bids received were, however, below the valuation fixed by the approved valuer and thus to maximize the price the learned company Judge (as he then was) permitted inter se biddings amongst the tenderers on 14.8.2003. The highest bid was of M/s. TVJ Steel Private Limited of Rs. 2.71 crore while the next highest bid was of the appellant of Rs. 2.70 crore for the entire plant, machinery, land and building. The order shows that the views of the secured creditor ICICI

and the Official Liquidator were also taken and it is not in dispute that the bid made was much higher than the reserved price.

3. On 22.8.2003 an offer was given by M/s. Rajat Steel of Rs. 3.00 crore. Since there was substantial increase from the offer given by the highest bidder the sale was reopened permitting the four bidders who had earlier participated to once again participate in the fresh inter se bidding process. This bidding took place on 25.8.2003. The bid made by the appellant was the highest of Rs. 3.52 crore which was accepted and a direction was passed to give possession to the highest bidder on payment of balance amount whereafter all Government dues payable were to be the liability of the appellant. The appellant was also permitted to put its own security in addition to the security provided by the Official Liquidator from the date of the order.

4. The appellant moved an application on 29.8.2003 to bring to the notice of the Company Court that a large part of the machinery had been removed through a broken wall by unknown people and thus the appellant should be permitted to repair the wall. Since the amount was deposited by the appellant, an application was also filed by the appellant for final order confirming the sale in favour of the appellant on 3.9.2003. The learned Company Judge on 5.9.2003, thus, passed an order directing possession of the entire unit to be handed over to the appellant and for issuance of the Sale Certificate. The original title deeds, if available were to be handed over to the appellant. The order, once again, emphasized that the sale was on "as is where is and whatever there is basis". The possession of the entire unit was handed over as per possession memo dated 8.9.2003.

5. A direction was also passed for issuance of the sale certificate on 27.11.2003 as it had not been issued till that date as also to hand over the title deeds. However, the needful was not done.

6. The appellant filed an application on 12.4.2004, being CA No. 422/2004, making an averment that at the time of submitting of the bid the appellant had been told that the total area of the land was around 40 acres which had weighed with the appellant to raise the bid from Rs. 2.70 crore to Rs. 3.52 crore. However, when photocopies of sale deeds were forwarded to the appellant by the Official Liquidator on 26.3.2004, the total land under the three sale deeds came to 27 acres only. The appellant, thus, felt that the sale deed for the balance area of 12 acres had not been forwarded and sought direction to the Official Liquidator to supply the sale deeds for the balance area. The IDBI bank to whom the property was mortgaged, however, addressed a letter dated 9.6.2004 to the Official Liquidator in response to a query from the Official Liquidator in respect of the aforesaid issue stating that the mortgage had been created on all the immovable properties of M/s. Nova Udyog Limited comprising of land admeasuring 137 bighas and 9 biswas, the details of which were being forwarded. The title documents were stated to have already been sent to the Official Liquidator and the Official Liquidator was asked to discuss this matter

with the appellant in view of the aforesaid stating "you are requested to impress upon the buyer of the assets to accept the same for expeditious settlement of dues and obtain confirmation of sale in his favour at the earliest".

7. It is the aforesaid application filed by the appellant on which the impugned order dated 4.11.2004 has been passed and the appellant has consequently filed the present appeal.

8. The controversy as reflected in the impugned order arises from the valuation report of the approved valuer. It is this valuation report prepared in the year 2002 and having some discrepancies which has created the problem at hand. The valuation report states that the factory was entered into through a hole in the compound wall at the backside and thus, exact inspection and measurement could not be carried out. However, the report was being submitted on the basis of actual findings/measurements at site and also on information supplied by the IDBI and certain clarifications from them. The valuation report valued the land and building at Rs. 2,68,37,850.00 and the plant and machinery at Rs. 32,00,000.00 with the total valuation of Rs. 3,00,37,850.00. The valuation report does mention certain khasra numbers and while determining the value of the land states that as per the details provided by IDBI it was 63 bighas and 18 biswas or 39.90 acres or 1,93,297.5 sq.yds. Thereafter the valuation has been done at Rs. 80.00 per sq.yd. totaling to Rs. 1,54,63,800.00. Thus, the valuation has been done on the basis that the land is 1,93,297.5 sq.yds. If this amount of land is converted into acreage, it would be 39.93 acres. The problem occurred on account of the fact that the area mentioned in bighas is 63 bighas and 18 biswas, which is less.

9. It may be noticed that there were two mortgages created by M/s. Nova Udyog Limited with IDBI. The first mortgage of 73 bighas and 11 biswas was created on 12.2.1992 and of 63 bighas and 18 biswas on 8.7.1992. The land, thus, totaled to 137 bighas and 9 biswas. One may notice at this stage that the measurement of bighas varies from State to State though there is no difference in the square yard or acreage unit measurements.

10. The IDBI filed an affidavit stating the aforesaid two mortgages and apparently sought to take a stand as if only 63 bighas and 18 biswas had been put to auction while the remaining land continued to remain mortgaged with the IDBI. It may simultaneously be noted that at no stage of time did IDBI file an application to set aside the sale on account of any discrepancy in the auction notice or otherwise and had forwarded the sale deeds for the complete land of 137 bighas and 9 biswas to the Official Liquidator and the communications of the IDBI referred to aforesaid showed that what was sought to impress was that the land was not 40 acres but about 27 acres.

11. The learned single Judge in the impugned order taking note of this measurement of 63 bighas and 18 biswas in the valuation report has stated that there appears to have been some conversion mistake while noting the area in

acreage of 39.9 acres and since the factory was built on the agricultural land measuring 63 bighas and 18 biswas it was that land which had been put to auction. The Tehsildar concerned had also been asked to carry out a demarcation of the land and a direction was issued that if the auction purchaser of land was in possession of land in addition to the land in question, the same should be returned back.

12. The matter was heard at length on a number of dates. The counsel for the appellant on the basis of the material on record ultimately took a stand that since the land was purchased on "as is where is and whatever there is basis" and the land was bounded by a wall, the Official Liquidator could only proceed to issue a sale certificate in respect of such land which stood in the name of the Company of 27 acres and thus, in effect prayed for withdrawal of the application, CA No. 422/2004. This was acceptable to the Official Liquidator as he could proceed to issue the sale certificate in respect of the land owned by M/s. Nova Udyog Limited. The counsel for the Official Liquidator clarified that if the land was Government land naturally the sale certificate would not be issued and the position would be the same in respect of the land owned by a third party but so far as the land standing in the name of the company was concerned there is no impediment. The matter could have been resolved in view of the aforesaid but learned Counsel for the IDBI sought to plead that the impugned order had directed that the appellant could retain 63 bighas and 18 biswas which had been sold. We find the plea of the IDBI without any basis.

13. It may be noticed that in view of the stand of the Official Liquidator, as noticed in the impugned order dated 4.11.2004, which arose on an application of the appellant, the appellant is seeking to withdraw the application and to proceed with the issuance of sale certificate. The IDBI at no stage of time filed any application seeking to challenge the sale in favour of the appellant or the factum of the area being handed over to the appellant being more than what was covered by the auction notice. A completely different stand is sought to be taken now in view of the impugned order even though IDBI as far back as 9.6.2004 has emphasized to the Official Liquidator that the land admeasuring 137 bighas and 9 biswas had been sold which was about 27 acres and the appellant should not ask for more land. This letter had been issued by the Deputy General Manager of the IDBI. The controversy, thus, was limited to the fact that as to whether only 27 acres of land should be transferred to the appellant which was owned by the company or whether the appellant had been called upon to overpay for the land by stating in the valuation report the land measured 40 acres. Once the appellant was willing to accept the land measuring 27 acres, the controversy did not survive.

14. We may also notice on merits that the material factor which seems to have escaped the attention of the learned single Judge is that the valuation of the land has been made on the basis of square yards. The said square yards on conversion into acreage amounts to 39.9 acres. Thus, it cannot be said that only

63 bighas and 18 biswas of land was sold and there was a mistake in the report when the whole valuation is based on a particular index of measurement. The IDBI by merely filing an affidavit before the learned single Judge cannot now say that the balance amount of 73 bighas and 11 biswas should revert to the IDBI. The clarification by the valuer dated 7.3.2005 only refers to the mistake of conversion from bighas to acres but the fact remains that the valuation is on the basis of sq. yd. area.

15. We may also notice that a plan of the land has been shown to us by learned Counsel for the appellant which would show that the building, boilers, raw material store, office block, etc. purchased by the appellant are all located on this land measuring 73 bighas and 11 biswas while on the land measuring 63 bighas and 18 biswas only the servant quarters and the labour quarters are located. The appellant has purchased the complete super-structure and machinery. The super-structure is located on the total area of 137 bighas and 9 biswas. This, thus, leaves no manner of doubt that when the sale took place on "as is where is and whatever there is basis", the complete lands on which the buildings were located were sold which all fell within the four corners of the wall. The appellant, thus, purchased the land and structure within the four corners of the wall and that is the reason why learned Counsel for the appellant accepted that whatever land is situated within the wall area is what is purchased even if it is less than 40 acres as mentioned in the valuation report.

16. Learned Counsel for the IDBI sought to refer to a judgement of the learned single Judge of this Court in the matter of Saraf Paper Mills Ltd. (in liquidation) through Official Liquidator 155 (2008) DLT 517 to emphasize that in an auction sale of property the court was empowered to reopen an auction for sale after it had been confirmed or after possession handed over if infirmities were found. It was emphasized that the facts of the case also showed that the area of land had not been mentioned. We are, however, of the view that the said judgement is on its own facts would have no application to the present case. No one has challenged the sale. The sale stands confirmed. The controversy only arose on an application of the appellant that he was getting less land. If at all it could have been voidable at the option of the appellant who does not now even claim the extra land as per square yards measurements which forms the basis of the valuation report but accepts the land on "as is where is and whatever there is basis" amounting to 137 bighas and 9 biswas.

17. The impugned order is accordingly set aside, CA No. 422/2004 filed by the appellant before the learned single Judge stands withdrawn and the Official Liquidator shall transfer the title of the land measuring 137 bighas and 9 biswas or any other land within the wall area owned by M/s. Nova Udyog Limited to the appellant. Needless to say that if there is any Government land within the four walls, the same cannot be transferred. Official Liquidator to take expeditious steps with the assistance of the appellant to complete issuance of sale certificate within a maximum period of three (3) months from today.

18. The appeal is accordingly allowed leaving the parties to bear their own costs.

