
(2011) 07 DEL CK 0047

In the Delhi High Court

Case No : CO.A. No. 601 of 2008 in Company Petition No. 188 of 1999

In Re: Continental Textile Mills Ltd.

Date of Decision : 04-07-2011

Acts Referred:

Citation : (2011) 3 CompLJ 424

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : A.M, Singhvi, Sanjeev B. Sinha, Pankaj Singh and N. Ramachandran, of Co. A. No. 601/2008, C.U. Singh, Barun Kumar Sinha, V.P. Singh, Vinay Sharma, Vikram Bajaj, for M.K. Verma-ex Director and Kanwal Choudhary, for OL, for the Appellant;

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—The applicant M/s Suchit Pavitra(Saraspur) Industrial Co-operative Society is the auction-purchaser whose highest bid for the purchase of some land of the Company in liquidation was accepted by this Court but the bid money was deposited beyond the time granted by the Court and so it is now seeking acceptance of the belated payments made by it.

2. The relevant facts may first be noticed. In this voluntary winding up petition filed by M/s Continental Textile Mills Ltd. an order was passed on 13.10.2004 for the winding up of the said Company(hereinafter to be referred to as "the Company in liquidation"). Thereafter, the official liquidator gave a public notice through various newspapers inviting sealed tenders for the purchase of some land of the Company in liquidation in Ahmedabad (hereinafter to be referred to as "the land in question") on "AS IS WHERE IS AND WHATEVER THERE IS BASIS?". The reserve price of that land was fixed at Rs. 9,00,54,000/-. The applicant-auction purchaser and seventeen other parties had submitted their offers ranging from the minimum reserve price to Rs. 21 crores. The applicant-auction purchaser's offer was for Rs. 9,90,00,000/- . However, with a view to get more price for the land in question open bidding was conducted before the Court on 01.02.07 in which all the eighteen parties who had already submitted their

offers, including the present applicant-auction purchaser, had participated. The applicant-auction purchaser gave the bid of Rs. 41,05,08,000/- and the same was accepted by this Court being the highest and it was directed to make the payment of 25% of the bid amount within 30 days and the balance 75% amount was ordered to be deposited within 60 days with the official liquidator.

3. The applicant-auction purchaser, however, did not make the payments within the time so fixed by this Court and instead paid 25% of the bid amount on 12/03/07 and the balance 75% long time thereafter on 08/08/08. Both these payments were made by the auction-purchaser in the office of the official liquidator without getting extension of time from the Court and the official liquidator also appears to have accepted the belated payments without referring the matter to the Court.

4. Some of the relevant paras of this application under disposal containing the reasons for not making the payments within the time fixed by the Court are being re-produced below:

5. That applicant states that on personal visit at site, it was found that there are many encroachers who have made encroachment upon land of the company that is under sale to the applicant. These encroachments are required to be removed from the site immediately so as to give vacant and peaceful possession of the premises.

6. That applicant further states that the applicant also found that some persons are found doing their business in the said land in question using premises of the company. Those persons are (1) Associates Petroleum Corporation, (2) C.B. Merchand (3) M. Madhukant & Co., all situated at Continental Textile Mills Compound, Naroda Road, Opp. Aruna Mills, Ahmedabad. The applicant is not aware about legal status of said persons who are illegally occupying portion of lands in the mills compound. As such these persons have no right whatsoever to occupy the land premises once an order of winding up has already been passed and all assets vest in OL as per the company. Therefore, it is necessary that all persons who are occupying premises should be removed forthwith and with help of police party if necessary so that on full payment being made by the applicant, vacant and peaceful possession of the land can be given to the applicant. Any authority on any such encroachment does not inform the applicant.

7. That apart from above when on 28.01.2007, the applicant was making arrangement, he came to know about the few facts,

(A)WILL MATTER

(i) One Miss Nayanaben Jyotindra Trivedi, 7 Sadhav Apartment, Jayant Park, Society, Mani Nagar, Ghodasar Road, Ahahamadbab by way of a Registered Will executed on 23.10.1986 by one Late Shri Indravadam Chimanlal Patel in her favour claims herself to be the owner of land measuring 1,17,718 Sq. mtrs. Which has been sold by the Official Liquidator on 01.02.2007 for recovery of the

Debts of the Company in Liquidation. As per her the Company in Liquidation was the Tenant in the land question and hand no right or title over the land to pass on. She has sent a Notice to the Official Liquidator as well. Now she has filed C.A. No. 777/2007 seeking enforcement of the Will.

(B) LEASE MATTER

(ii) Two other persons namely Ashok Kumar & Shreepal Ramesh Bhai Patel claim that a part of the land in question measuring 23,358 Sq. mtr. belongs to them. This land was given by them to the Company in Liquidation on rent and since 1991-92 they have not received the rent as well.

They have also filed an Application being C.A. No. 219-20/2007 in this Hon'ble Court with the following prayer.

XX

(C) POSSESSION

iii. As per the valuation Report submitted by Sh. Suresh Kumar Sharma, the possession of the land is with the Collector, Ahmedabad which is under attachment toward the land." It is not mentioned as well whether the land is a free hold land or lease hold land. The Valuation of the land has also not been correctly assessed. The land has been sold for a much higher price which is near to five times of the valuation.

9. That on 10.4.2008 another person has namely Sakarial Shodhan N and Kisore has also filed an Application being C.A. No. 422/2008 claiming himself to be the Lessor of the part of the land in dispute.

10. Under the above circumstances it is not clear as to whether the Official Liquidator has right, Title and possession to pass on/deliver to the applicant or not. The applicant has already deposited Rs. 10,00,00,000/- (Approx.) with the Official Liquidator and is ready and willing to deposit the balance amount as directed by this Hon'ble Court.

11. That under the above circumstances the official liquidator may not be in a position to handover the possession and transfer the file of the land in question to the applicant in next one year.

The Official Liquidator may not get the Title till the C.A. No. 219-20/2007 are decided. So far as the possession is concerned it is also not with the Official Liquidator, the same is with the Collector, Ahmedabad. It will also take a long time to get the possession by the Official Liquidator to pass on to the applicant."

12. That due to the Stay order dated 16.03.2007, passed in the CO.A. No. 14/2007 challenging the order-dated 01.02.2007, through which the properties were sold to the applicant, filed by the Ex-Director; Mr. M.K. Verma, the applicant was not depositing the remaining 75% of the bid amount.

As an interim relief the Division Bench has directed that the confirmation of sale

will be subject to outcome of the Appeal. On 24.03.2008, the above Appeal was withdrawn."

14. That for the following reasons the applicant did not deposit the remaining 75% of the bid amount:

(i) It is submitted that till the disposal of the various C As i.e.C As No. 419-420/07, CA No. 579/07, CA No. 777/07 & CA No. 422 of 2008 the applicant may not get the possession & Title of the land in question:

(ii) Due to the Stay order dated 16.03.2007, passed in the CO.A. No. 14/2007, through which the properties were sold to the applicant, filed by the Ex-Director; Mr. M.K. Verma.

Following prayers were made in this application:

a. To propone the matter for an early date;

b. To condone the delay in depositing the remaining 75% of the bid amount and the applicant be allowed to deposit the above amount with the Registrar General of this Hon''ble Court with a direction to deposit the same in the F.D.R. for 6 months;

c. The Official Liquidator be directed to take over the possession and Title Deeds of the land in question from the persons/Authorities under whose power and control the same are;

d. This Hon''ble Court may be pleased to pass appropriate orders and/or directions to the Official Liquidator & the Collector, Ahemdabad to remove all encroachments and to remove all persons occupying part of land of Continental Textile Mills Ltd. (in Liqd.) situated at Naroda Road, Nr. Arvind Mills, Asarwa, Ahmedabad;

e. This Hon''ble Court may be pleased to pass an appropriate order that the applicant may be allowed to depute their security Guards to protect land and be allowed to place their Board at site till disposal of this application. The applicant may be allowed to carry out work of cleaning and leveling of land at their cost & risk;

f. Further the applicant be allowed to nominate namely M/s. STHAPATYA BUILDCON (PVT. LTD.) 304, Parashwa Tower, Nr. Pakwan-II Dinning Hall, S.G. Road, DISTT. AHMEDABAD (GUJRAT) which is of the applicant.

g. Pending hearing and final disposal of this application, this Hon''ble Court may be pleased to grant prayers (c) to (E) above as ad-interim relief;

h. Any other and further relief/s as this Hon''ble Court may deem fit and proper be granted.

5. However, before Co.A. No. 601/98 could be taken up for hearing another application came to be moved by the auction-purchaser in May, 2009, being

Co.A. No. 448/2009, filed with a prayer for fresh auction of the land in question. The relevant averments in Co.A. No. 448/09 are re-produced below:

That since 24.03.2008 till 16.08.2008, no action was taken by the No. 1 in the present application, despite of the liberty taken by from the Division Bench to file an appropriate application seeking for review and recalling the said order relying on the aforesaid certificate of the bank dated 06.02.2007.

That on 08.08.08, as the above Appeal was withdrawn, the applicant deposited the remaining 75% bid amount with a request to the Official Liquidator to handover the possession to the applicant but of no use....

It is humbly submitted that the applicant has raised the balance amount from various sources at a very heavy interest for making the final payment. They have done all this with an expectation that they will get the clear Title and possession within next 30 to 60 days of making the final payment of Rs. 41,05,08,000.00 (Rs. Forty one Crore, Five lacs & eight thousand only).

Now it has proved that the Respondent No. 1 is neither interested in revival of the Company nor to safeguard the same despite the liberties sought from this Hon"ble Court and the Hon"ble Division Bench from time to time.

That since the day of auction i.e. 01.02.2007 till date the main grievance of the Respondent No. 1 is regarding the price of the land in question.

That as the matter is likely to come after 4 to 6 weeks, if proponed, hence it is submitted that a fresh Sale Notice be published in the News Papers of Gujarat/ Mumbai & Delhi with a reserve price of Rs. 61,00,00,000/-....

After the above auction it will be cleared whether the contention of the Respondent No. 1 is correct or not. By this action the issue of best price will be decided once forever.

That it is therefore, in the interest of justice that appropriate that the matter be proponed and the order dated 18.03.2009 be modified to the extent that the Official Liquidator is directed to publish a fresh Sale Notice in the Local News Papers of Gujarat/Mumbai & Delhi with a Reserve price of Rs. 61,00,00,000/-

6. The auction-purchaser, however, changed its mind and withdrew that application on 25.09.09 thereby leaving only Co.A. No. 601/08 to be decided by this Court. In this application, as noticed already, many reliefs were claimed but during the course of hearing, submissions were made by Dr. Abhishek Manu Singhvi, learned senior counsel for the auction-purchaser, only for accepting the belated payments of the bid money.

7. This application was opposed by the official liquidator as well as some persons who claimed themselves to be the contributories in the Company in liquidation, one of whom was stated to be related to Shri M.K. Verma, ex-Director of the Company in liquidation. These persons-objectors have already brought to the Court one party(M/s Safal Realty Pvt. Ltd.) which has offered to buy the land in

question for sixty-two crores of rupees. On their behalf learned senior counsel Shri C.U. Singh had argued the matter. Though Mr. M.K. Verma, ex-Director of the Company in liquidation, who had sought setting aside of the auction already held, had also opposed this application by filing reply thereto but during the course of hearing no submissions were advanced on his behalf by his learned senior counsel Shri V.P. Singh.

8. It was contended by Dr. Singhvi, learned senior counsel for the auction purchaser, that the delay in making the payment of the bid amount had occurred because of the justified reasons mentioned in this application and considering the fact that a huge amount of over Rs. 41 crores has been deposited by the auction purchaser it would be in the interest of the auction purchaser, the creditors of the Company in liquidation as well as its employees etc. that the bid amount belatedly deposited by the auction purchaser is accepted and the sale is confirmed in its favour since already a huge amount of interest has also accrued on the said payment made by the auction purchaser.

9. In the present case there is no dispute about the fact that auction purchaser had defaulted in making the payment of 25% of the bid amount within one month of the date of auction as well as the balance 75% within the period of 60 days. The payment of 75% was made after more than a year of the last date for the payment. In the facts and circumstances of this case, I am of the view that I need not go into the genuineness of the reasons being given by the auction purchaser for not making the payment of the bid amount within the period fixed by this Court. It is now well settled that it is the duty of the Court to see that maximum price is fetched while auctioning some property of the Company under liquidation. No doubt, the auction purchaser in the present case had given the highest bid for Rs. 41,05,08,000/- in the year 2007 during the Court auction but the fact remains that the bid amount was not paid by the auction purchaser for getting the sale confirmed in its favour. During the period of the delay in making the payment of a bid amount the value of the land in question has substantially increased and that is evident from the fact that already one party has come to the Court with an offer of Rs. 61 crores and the auction purchaser had also prayed for return of the money which it had deposited with the Official Liquidator and for holding fresh auction with the reserve price of sixty one crores. In these circumstances, this Court would not be justified in accepting the belated payments made by the auction purchaser and confirming the sale in its favour by ignoring the substantial increase in the market value during all this period. Therefore, without going into the question whether the auction purchaser had good reasons for not making the payments of the bid amount within the time fixed by the Court, this Court is not inclined to accept the payments made by it belatedly and without any permission from the Court.CO.A. No. 601/08 is accordingly dismissed. The money deposited by the auction purchaser be returned to it by the Official Liquidator.