(2009) 01 DEL CK 0074

In the Delhi High Court

Case No : CO. APP. No''s. 34, 42 and 47 of 2006

India Capacitors Ltd. Employees Union and Krishna Cell Links Pvt. Ltd. APPELLANT

Vs

Official Liquidator and Others
 Omkam Finvest Pvt. Ltd. Vs India Capacitors Ltd. and Another RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Citation : (2009) 148 CompCas 768 : (2009) 1 CompLJ 564 : (2009) 91 SCL 20

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

Bench : Division Bench

Advocate : Vikramjit Banerjee, in CO. app. No. 34 of 2006 and Harish Malhotra and Ashim Vachher, in CO. app. No. 42 of 200, for the Appellant; S.K. Luthra, in CO. APP. Nos. 34 and 47 of 2006, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—M/s. India Capacitors Ltd. (for short, "the said Company"), a company incorporated and registered under the Companies Act, 1956 (for short, "the said Act"), was directed by an Order of the learned Company Judge dated 23.10.1997 to be wound up and the Official Liquidator (for short, "OL") was directed to take possession of the assets of the said Company. The endeavours to revive the said Company had failed, but the Union of the Employees of the said Company filed an application on 05.05.2005 under Sections 529A and 546 of the said Act submitting a proposal for revival of the said Company along with one M/s. Cygnus Developers Pvt. Ltd. (for short, "M/s. Cygnus").

2. It is a case of the Employees Union that M/s. Cygnus was directed to deposit a sum of Rs. 10 lacs on 26.05.2005 with the further direction to deposit an additional sum of Rs. 65 lacs with the OL. It is further claimed that though a cheque of Rs. 65 lacs was given to the OL, the same was never presented, but, on the other hand, the application filed by the Employees Union was dismissed

on 04.08.2005 when a bid made by M/s. Balaji High Rise Pvt. Ltd. (for short, "M/s. Balaji") was accepted. M/s. Cygnus is alleged to have prepared demand drafts on 11th/12th August, 2005 aggregating to Rs. 65 lacs and an application was filed before the learned Company Judge seeking acceptance of the same. This application was, however, dismissed on 15.09.2005. The matter went on before the learned Company Judge thereafter till the Orders were passed on 25.05.2006 by the learned Company Judge holding fresh auctions and accepting a bid of M/s. Balaji for Rs. 7 crores though there was no undertaking given for re-employment of the workers of the said Company.

3. The aforesaid, thus, forms the subject matter of Co. App. No. 34/2006.

4. There is a second set of two appeals being Co. App. No. 42/2006 and Co. App. No. 47/2006 filed by M/s. Omkam Finvest Pvt. Ltd. and M/s. Krishna Cell Links Pvt. Ltd. respectively aggrieved by the same Order as it is their case that they were also bidders for the assets of the said Company and there were procedural infirmities in the bid, which call for interference in the present appeals.

5. The aforesaid three appeals have been heard together and are being disposed of by this common Order.

6. The subject matter of dispute is the factory premises of the said Company situated at 99, Motilal Gupta Road, Behala, Kolkata "700008 (for short, "the said factory premises). There are only two secured creditors, namely, M/s. Suman Investment Ltd. and the Employees Union. The OL representing the said Company has placed today before us the status of the claims received, which are as under:

S. No. Particulars Number of Claims Amount Admitted (In Rs.) 1. Workers Including 2 Officers 78 1,81,57,417.83 2. Secured Creditors 1 87,54,076.00 3. Unsecured Creditors 7 71,82,000.00 4. Investors Nil Nil 5. Preferential Claims Nil Nil 6. Claim Rejected 1 - GRAND TOTAL 87 3,40,93,493.83

Thus, the aforesaid is the total liability of the said Company and a sum of Rs. 7 crores stands deposited by the successful purchaser for purchase of the said factory premises.

7. A perusal of the impugned order shows that none appeared for M/s. Cygnus on 25.05.2006. The position is the same for the other two appellant companies. It is the case of the appellant companies that they had sought details from the office of the OL specifically in respect of some land, which vested with the Government as also demarcation of the actual land. Since such documents were not made available, there could not be a proper bid made by these two companies.

8. Learned Company Judge has taken note of the fact that the Order for liquidation was passed as far back as on 23.10.1997. In order to facilitate the disposal of the assets more specifically the immovable assets being the factory and land, an Order was passed on 27.01.2000 appointing a Valuer, who

submitted a valuation report on 10.04.2000 valuing the property at Rs. 3.5 crores. Since there was an issue involved about the mortgage of the land of the said factory premises with the Government of West Bengal, the said aspect was directed to be looked into. It emerged from these directions passed in that behalf that 1.29 acres of land belong to the State of West Bengal while the remaining land vested with the said Company.

9. In pursuance to the valuation report, the learned Company Judge by an Order dated 15.04.2004 directed the sale proclamation to be issued and ten bids were received on 22.07.2004 Even at that stage, an issue arose about the proper demarcation of the land segregating the area which vested with the State of West Bengal. The Government of West Bengal filed a compliance report dated 02.05.2005 in respect of the demarcation along with maps with the total area under occupation of the said Company being specified as 4.74 acres.

10. Learned Company Judge has, thus, taken note of the fact that the issue of demarcation itself took more than three years and the relevant reports were placed on record. It is only after the maps were filed before the Court an open bid was held on 12.05.2005 in which six bidders participated. The highest bid was of Rs. 2.5 crores coming by M/s. Balaji, but in view of the application filed by M/s. Cygnus, further sale process got stalled till the application of M/s. Cygnus was dismissed on 04.08.2005.

11. The endeavour of M/s. Cygnus to rake up the issue of demarcation by filing a subsequent application was not successful and in the inter se bid held, the highest bid received was of M/s. Balaji of Rs. 3.15 crores.

12. The aforesaid once again gave rise to another set of applications by M/s. Efflon Tie Up Pvt. Ltd. (for short, "M/s. Efflon") and M/s. Chitrakoot Agencies Pvt. Ltd. (for short, "M/s. Chitrakoot"). M/s. Chitrakoot stated that it was willing to give a substantial higher bid than Rs. 3.15 crores. This very applicant claimed in the proceedings resulting in the Order dated 25.05.2006 that there was no demarcation. In fact, the auction held on 04.08.2005 was not confirmed, but the option was given to the various applicants to visit the land at their own risk and expenses in terms of the Order dated 22.09.2005.

13. The OL was directed on 21.04.2006 to once again take out an advertisement/ sale proclamation in the newspaper requiring the bidders to deposit an Earnest Money Deposit (for short, "EMD") of Rs. 31.50 lacs for participating in the bidding process and the parties were given opportunity to again visit the said factory premises on 12.05.2006 and 13.05.2006 to examine the land. It is also noticed in the impugned order that M/s. Maruti Real Estates Pvt. Ltd. and M/s. Chitrakoot had only furnished cheques and not demand drafts, which were dishonoured/payment stopped. The valid bids given were considered and inter se bidding was held on the date of the impugned order, which substantially increased the bidding amount to Rs. 7 crores by M/s. Balaji, which had already deposited the EMD and the said bid was consequently accepted.

14. Learned senior counsel for one of the appellant companies once again seek to rake up the issue of demarcation and their inability to properly inspect the said factory premises as the area was not clean, completely ignoring the fact that the status report about the demarcation was on record.

15. We cannot lose sight of the fact that a period of almost nine years had elapsed from the date of winding up of the said Company till the bidding process and the assets could not indefinitely be kept in abeyance without them being sold. The bidding had taken place on "as is where is basis" and the two appellant companies were not even represented on the relevant date. There had been repeated moves to stall the sale of property though the passage of time did result in the increase of the price, which is a natural consequence of the increase in the land prices. The long pendency has also resulted in theft of movable assets worth more than Rs. 22 lacs.

16. Learned Company Judge, in our considered view, rightly evolved the process of inter se bidding in the Court itself amongst the bidders, who cared to be present and the resultant price fetched was of Rs. 7 crores almost double the amount of the liability of the said Company.

17. Learned senior counsel referred to the judgment of the Apex Court in FCS Software Solutions Ltd. Vs. LA Medical Devices Ltd. and Others, to advance the proposition that even after an auction sale has been completed, re-auction can be carried out if appropriate prices are not fetched due to non-disclosure of necessary facts.

18. Learned senior counsel emphasized that a sale conducted under the provisions of the said Act was different from one under Order XXI Rule 92 of the Code of Civil Procedure, 1908 and in that behalf referred to the judgment of the Apex Court in Divya Manufacturing Company (P) Ltd., Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, . In the facts of the case, prior to the delivery of possession and execution of the sale deed, certain other parties had offered higher amounts.

19. Learned senior counsel also emphasized that in a recent judgment by learned Single Judge of this Court In The Matter Of : In Re: Saraf Paper Mills Ltd., , the Company Court took note of the fact that where the process of issuance of sale proclamation, initiation of bids and making of bids by only handful of persons resulted in limited inter se bidding in Court, the same was vitiated by gross material irregularity if not fraud with inadequate price.

20. The aforesaid are well settled principles. The Company Judge is to make every endeavour to get the best price. No doubt, learned senior counsel for one of the appellant companies on instructions stated that the said appellant was willing and is still willing to pay now Rs. 8.5 crores for the same land, i.e., the said factory premises. But what is to be seen is whether there was any impropriety or procedural irregularity in the manner of conduct of the auction or the bidding done in the Court. We find none.

21. The matter has been prolonged on one pretext or the other postponing the inevitable sale of the property. Not only has the property been sold, but also the possession handed over to the successful auction purchaser. The physical possession was handed over on 27.09.2006 as per the affidavit filed by the OL affirmed on 23.10.2008.

22. Learned senior counsel did seek to contend that the successful auction purchaser has been selling portions of the property, but that is the prerogative of the auction purchaser to make best use of the said land purchased by it. After all, no one is performing a charitable function, but the bidding has taken place for commercial interest.

23. It cannot be lost sight of that the bid is sufficiently high to not only meet all the claims of the secured creditors, but the leave a substantial balance of almost the equal amount. The workers, in our considered view, can make no grievance when each and every of their claim is being honoured. Their endeavour to have some scheme with the third-party proved unsuccessful. They can hardly raise a grievance.

24. Learned Company Judge has made the best endeavour to get an appropriate price at the relevant stage of time and vested rights have been created in favour of the auction purchaser over a period of time subsequent to the deposit of the amount, possession being handed over and the property even alleged to have been further dealt with. The clock cannot be set back because one of the parties offers an additional 20% of the amount now. If such a process is followed, there can never be any end to a transaction of this nature where assets have to be sold.

25. In our considered view, the endeavour by the appellant is to clearly drag on the litigation on one pretext or the other. We find the appeals without any merits.

26. The appeals (Co. App. Nos. 42 and 47 of 2006) are dismissed with costs of Rs. 10,000/- each, but in view of the fact that Co. App. No. 34/2006 is by the Employees Union, we desist from imposing costs in that appeal.