(2008) 09 OHC CK 0098

In the Orissa High Court

Jami Sivasai APPELLANT

Vs

Official Liquidator, Orissa High Court and Others RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Citation : (2008) 106 CLT 639 : (2008) 2 OLR 1072 Supp

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This Company Appeal has been filed against thy Judgment and order of the Learned Company Judge dated 28.8.2008 passed in COPET No. 16 of 2002 by which the sale and delivery of possession of properties of M/s. Utkal Oils Limited (company on liquidation) have been directed in favour of the Respondent No. 2 - Ws. IVIittal Infra Projects Pvt. Ltd. and prayer for extension of time to deposit of amount offered by the present Appellant and Smt. J. Nirmala-Respondent No. 3 was refused.

2. The facts and circumstances giving rise to the case are that M/s. Utkal Oils Limited a company failed to repay the debts of its creditors and therefore the liquidation process started. The winding up order was passed and thereafter the Learned Company Judge directed to put the properties of the said company into auction. Accordingly the Official Liquidator issued the sale notice in the daily news papers. The approved registered valuer assessed the valuation of the properties of the said company to the tune of Rs. 1.32 crores and thereafter, for the purpose of conducting the auction sale the up set price was fixed at Rs. 1.20 crores. In pursuance to the sale notice, parties were participated in the auction held on 28th March, 2008. After completing the formalities, the Learned Company Judge approved the sale in favour of the highest bidder - Respondent No. 2 who had offered the bid at Rs. 1,44,51,000 so far as Lot No. 1 is concerned. The Appellant, who had not participated in the auction came to know about the aforesaid bid at a belated stage and approached the Court by filing a

Misc. Case bearing No. 41 of 2008 raising objection that the property had been sold in auction at a grossly low value and asked the Court to accept his bid for a sum of Rs. 1.65 crores. He also asked the Learned Company Judge to permit him to deposit the EMD of Rs. 33.00 lakhs within a week and the balance amount of consideration to the tune of Rs. 1.32 Crores within 60 days as per the terms of sale. The aforesaid Misc. Case and another Misc. Case No. 42 of 2008 filed by another party, Smt. J. Nirmala, were taken up together on 9th May, 2008 by the Learned Company Judge and in course of hearing, the Appellant raised its offer to 1.75 crores and became the highest bidder. Appellant was willing to deposit the EMD of Rs. 35 lakhs with the Respondent No. 1 within a week. The Learned Company Judge passed the order on 9.5.2008 as follows:

It has been pointed out by Mr. R.K. Rath, Learned Senior Advocate appearing for Jami Sivasai and Mr. R. Agarwal, Learned Counsel appearing for smt. J. Nirmala that their offers now are for Rs. 1,75,00,000/- and Rs. 1,59,00,000 respectively for lot No. 1. However Smt. J. Nirmala had already offered an amount of Rs. 1,59,00,000/- earlier. But since she did not participate, the same was rejected vide Order Dated 1.05.2008 passed in Misc. Case No. 39 of 2008.

Today, Smt. J. Nirmala has brought the bank drats of Rs. 32.00 lakhs to be deposited as EMD. The Official Liquidator shall accept the same and deposit in a fixed deposit.

Mr. Rath, Learned Senior Advocate has also desired to deposit the EMD to the tune of Rs. 35.00 lakhs with the Official Liquidator within a week. If the EMD Is deposited with the Official Liquidator, the same shall be accepted and deposited in a fixed deposit, which shall be subject to further order of this Court.

Mr. S.C. Lal, Learned Counsel has raised objection to the said deposit. Therefore, the matter will be decided en the next date. Let Mr. Rath file EMD.

Put up this matter on 27.06.2008.

Till that date, the possession shall not be handed over by the official liquidator.

The Appellant failed to deposit the EMD amount i.e. Rs. 35 lakhs within a week as fixed by the Court, rather he made an application for extension of time by filing another Misc. Case bearing No. 43 of 2008 on 16.5.2008. The matter was again listed on 3rd July, 2008 and on that date Smt. J. Nirmala - Respondent No. 3 raised her offer to the tune of Rs. 1. 76 crores and became the highest bidder. On that date the Appellant was not present in the Court and no instruction could be given by him to his Counsel. The Court took note of the fact that the sum of Rs. 1,44,51,000/-, for which the auction had gone in favour of the Respondent No. 2, had already been deposited by M/s. Mittal Infra Projects Pvt. Ltd. - Respondent No. 2, and on the said amount the interest accrued to the tune of Rs. 1,26,079/- as on 3rd July, 2008. Appellant deposited the said amount of Rs. 35 lakhs on 26th July, 2008.

The matter was listed on 8.8.2008 but it could not be heard for paucity of time.

Respondent No. 3 did not deposit the amount, rather filed a Misc. Case bearing No. 50 of 2008 with a prayer that the matter be finalized in her favour with Rs. 1.76 crores and 30 days'' time be given to her to deposit the balance amount. Thereafter, the matter was listed on 21.08.2008 and on that date Respondent No. 3 pressed the Misc. Case No. 50 of 2008 and again the case was adjourned to 28.08.2008. On that date the application of Respondent No. 3 for extension of time was rejected. In the meanwhile, Respondent No. 2 - M/s. Mittal Infra projects Pvt. Ltd. has also deposited Rs. 30 lakhs to come up at par with Respondent No. 3. The total amount paid by the Respondent No. 2 was to the tune of Rs. 1,75,77,079/- and the sale was confirmed in its favour and further direction had been issued to hand over the possession to Respondent No. 2 and accordingly possession of the property has been given to Respondent No. 2. Hence this appeal.

3. Mr. Rath, Learned Sr. Counsel, appearing for the Appellant has raised the submission that Appellant had made an offer for a sum of Rs. 1.85 crores and is willing to; deposit the said amount .before this Court if the is granted 30 days'' time. Therefore his bid should be accepted and this Court should grant him four weeks time to deposit the balance amount.

4. On the other hand Shri S.C. Lal, Leamed Sr. Advocate appearing for Respondent No. 2 has vehemently opposed the appeal contending that the Appellant did not participate in the proceeding at the initial stage. He filed an application at much belated stage and when Respondent N0.2 itself had enhanced his bid to equalize the bid made by the Appellant, the case of the Appellant could not be Considered. More so, the Appellant did not make any depasit whatsoever within a period of one week as directed by the Court vide Order Dated 9th May, 2008. Therefore, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the Learned Counsel for the pariies and perused the record.

6. It is settled legal-proposition that Company Court must always try to secure maximum consideration for the properties of the companies on liquidation (vide Union Bank of India Vs. Official Liquidator H.C. of Calcutta and Others, ; Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, ; and a recent Judgment of the Supreme Court in Civil Appeal No. 3628 of 2008, Bakemans Industries Pvt. Ltd. v. New Cawnpore Flour Mills and Ors decided on 16.5.2008.

7. Undoubtedly the Respondent No. 2 is the highest bidder. It has shown its bona fide by depositing the entire amount. At a later stage, when higher amount had been offered by the Appellant, who did not participate at the initial stage, the Respondent No. 2 enhanced its bid to equalize the bid offered by the Appellant. The said enhanced bid of the Respondent No. 2 has been accepted by the Court. Respondent No. 2 deposited the balance amount. Thus total deposits made by it have been to the tune of Rs. 1,75,77,079/-. The Respondent No. 2 has already

been put in possession and it started running the said Unit. On the other hand the Appellant failed to deposit the amount within the scheduled time as per the direction of the Learned Company Judge. There is nothing on record to show that Appellant made an enhanced offer for Rs. 1.85 crores before the Learned Company Judge

8. Hence, no fault can be found with the Judgment and order of the Learned Company Judge. Enhancing the bid at a belated stage but not depositing the amount itself is a ground for rejecting the claim of the Appellant. Appellant is asking four weeks time to deposit the balance amount if his offer of Rs. 1.85 crores is accepted. He is not in a position to deposit immediately. Accepting his prayer as such would further lead to uncertainty and it would also create apprehension for Respondent No. 2 for running the Unit for no fault of it. The Court should not pass an order which would create an atmosphere of any uncertainty (vide Markandey Singh, I.P.S. and Others Vs. M.L. Bhanot, I.P.S. and Others,).

9. In such a fact situation, we are not inclined to entertain the appeal and it is accordingly dismissed.

B.N. Mahapatra, J.

10. I agree.