(2003) 04 AP CK 0049

In the Andhra Pradesh High Court

Case No : Company Application No. 601 of 2002 in R.C.C. No. 11 of 1999

K. Ramachandra Rao APPELLANT

Vs

Ranks Cables Ltd. (In Liquidation) RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Companies Act, 1956 — Section 530
Transfer of Property Act, 1882 — Section 55

Citation : (2003) 6 ALD 9 : (2003) 3 ALT 573 : (2004) 118 CompCas 122 : (2004) 50 SCL 273

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : L. Venkateswara Rao, for the Appellant; M. Anil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

T. Ch. Surya Rao, J.—This application is filed under Rule 9 of the Companies (Court) Rules, 1959, by the applicant seeking a direction to the official liquidator attached to this court to clear the statutory dues like the property tax, electricity consumption charges arrears and building maintenance charges pertaining to lot No. 3 of the assets of the company in liquidation.

2. The applicant is a third party auction purchaser. Pursuant to the terms and conditions set forth inter alia in the auction notice, he participated in the auction and became the highest bidder. Thereafter the bid was knocked down in his favour and after paying the sale consideration, a sale deed was executed in his favour by the official liquidator and the property was also delivered. It so transpired subsequently that there appears to be some property tax arrears, building maintenance charges besides electricity consumption charges. When there has been a demand for payment of the property tax, the electricity charges and building maintenance charges, the applicant has now come forward with the present application for directing the official liquidator to pay the said charges.

3. Sri L. Venkateshwar Rao, learned counsel appearing for the applicant, seeks to contend that there has been no condition specific, inter alia, in the terms and conditions of the auction that the arrears of property tax, electricity consumption charges, building maintenance charges, etc., payable over the property should be paid by the auction purchaser. He seeks to invite my attention to Section 530 of the Companies Act. Section 530 reads that in a winding up case, there shall be paid in priority to other debts all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in Clause (c) of Sub-section (8) thereof and having become due and payable within the twelve months next before that date. It is obvious from a perusal of the said provision that apart from the preferential debts like debts to the secured creditors and wages payable to the workmen, the monies payable towards revenues, taxes, and cesses to the Central Government or a State Government shall take precedence over the other debts to be paid by the company. However, it is further obvious from a perusal of the said provision that these preferential payments either to a State Government or to a local authority which are due at the relevant date shall become due and payable within the twelve months next before that date. Any dues towards revenue, taxes cesses, etc., for a period of twelve months preceding the relevant date, namely, date of winding up order passed by the court shall take precedence over the other debts payable by the company to the unsecured creditors. In the instant case, the major portion of the amount payable towards taxes and charges was subsequent to the date of the winding up order. At any rate, Section 530 of the Companies Act cannot be invoked in the present case inasmuch as it is available only when the assets of the company which is ordered to be wound up by the company court are sought to be disbursed to the creditors, secured as well as unsecured, when the question of payment of preferential claims would arise.

4. Learned counsel appearing for the applicant then seeks to place reliance upon Section 55 of the Transfer of Property Act, 1882. Clause (g) of Sub-section (1) of Section 55 reads that all public charges and rent accrued due in respect of the property up to the date of the sale shall be paid by the seller. Clause (d) of Sub-section (5) of the said section reads where the ownership of the property has passed to the buyer he shall pay all public charges and rent which may become payable in respect of the property. But all this is germane only in the absence of a contract to the contrary. That apart Section 55 applies to cases of transfer inter vivos between the parties. It is being a general provision it has no application in cases of sales in invitum. For example, if the property is sold in a court auction, the auction purchaser cannot ask the court to pay the property taxes and similarly, in cases of public auction held through the court or the officers of the court. The general provision of Section 55 of the Transfer of Property Act which squarely applies to the cases of transfer inter vivos cannot in my considered view be invoked to the cases where the property is sought to be sold by means of a public auction. The purchaser should be always careful and he should go through

the conditions set forth inter alia in the tender and make necessary enquiries if need be and then prepared to purchase the property. Here is a case where the assets of the company which was ordered to be wound up have already been distributed by the official liquidator. The preferential claims like the claims of the secured creditors could not even be met in full. Therefore, there is no amount available with the official liquidator to meet any other demand including the debts of the unsecured creditors. Having regard to the said factual scenario, it becomes quite unreasonable for this court to direct the official liquidator to meet the demand of the payment of property tax, electricity consumption charges, and building maintenance charges.

5. With eyes wide open the petitioner after having gone through the terms and conditions as set out in the tender agreed to purchase the property. Therefore, he has to pay the taxes which are payable for the property which obligation runs along with the property.

6. That apart, here is a case after the payment of 20 per cent, of the bid amount the sale was confirmed. It so transpired subsequently that the applicant did mention about the dues towards the property tax, electricity consumption charges, and building maintenance charges and made an attempt to defer the payment of the balance sale consideration. Ultimately, when the court directed him to pay the balance amount or to face cancellation of the sale, he chooses to pay that balance consideration knowing pretty well that the property tax dues were there apart from the electricity consumption charges and the building maintenance charges. Having raised such an objection and having paid the balance sale consideration ultimately, notwithstanding the same, it is now not open to the applicant again to raise such an objection and seek a direction to the official liquidator to pay the said amounts. In any view of the matter, there can be no direction to the official liquidator to pay such arrears towards property tax, electricity consumption charges and building maintenance charges.

7. Learned counsel appearing for the official liquidator seeks to place reliance upon a judgment of the apex court in United Bank of India v. Official Liquidator [1994] 79 Comp Cas 262 and a judgment of the Delhi High Court in Karamchand Appliances Pvt. Ltd. v. Bharat Carpets Ltd. (In Liquidation) [2001] 103 Comp Cas 552. In the former case, the clause set out in the tender notice has come up for interpretation by the apex court and having regard to the said clause it was held that it is for the auction purchaser to pay the arrears towards the property taxes, etc. Of course, Clause (9) as set out in the tender notice in the instant case is not akin to the one which has come up for interpretation by the apex court in the said judgment. Clause (9) reads as under :

"9. No complaint of any defect or default in the said assets or by reason of any error or fault in the description or by deficiency thereof or in the particulars thereof shall be entertained and there shall be no claim of whatsoever kind in respect thereof."

8. It is obvious from a perusal of the said clause that no complaint of any defect or default in respect of the property shall be entertained and there shall be no claim whatsoever kind in respect thereof. Therefore, the claim of the present applicant that the arrears of the property tax, the electricity consumption charges and the building maintenance charges shall now be paid by the official liquidator cannot be entertained in view of the said clause.

9. In the latter case, the Delhi High Court held that the official liquidator who sold the property and assets of a company in liquidation under the orders of the court could not hold out any guarantee or warranty in respect thereof. That was a case again where the objection as regards the defect in title and description of the property have been raised. Repelling those contentions, the Delhi High Court was of the view that the purchaser should satisfy himself as to the title and encumbrances before participating in the auction and he cannot claim later any defect in title.

10. In any view of the matter, the request of the applicant cannot be considered.

11. In the result, the company application fails and is therefore dismissed.