(2008) 03 GUJ CK 0066

In the Gujarat High Court

Case No : Company Application No. 12 of 2008 in Official Liqudator Report No. 63 of 2006 in Company Petition No. 157 of 2001

Krishna Developers and Company	APPELLANT
Vs	
O.L. of Associated Pulp and Paper Mills Ltd. and Another	RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:
Companies Act, 1956 — Section 529, 529A, 530

Citation : (2008) 03 GUJ CK 0066

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Sangeeta N Pahwa, for the Appellant; Official Liquidator and Amee Yajnik, for Respondent 1 and Premal R. Joshi, for Respondent 2, for the Respondent

Judgement

K.A. Puj, J.—The applicant - an auction purchaser has taken out this Judge''s Summons seeking declaration from this Court that the applicant is not liable to pay the outstanding electricity dues of the Company in liquidation in respect of land bearing survey Nos. 1537/paiki, 1552/2, 1556/1, 1567, 1584/1 admeasuring in aggregate 2,04,259 sq. mtrs. (as per tender, total land admeasuring 2,10,513 sq. mtrs.) situated at Village and Taluka Bavla, District-Ahmedabad, purchased by the applicant apropos to an order dated 11/8/2006 made by this Court in OLR No. 63 of 2006 in the interest of justice and equity. The applicant has also prayed for the direction to the respondent to take all necessary steps to provide fresh electricity connection in respect of the above referred property. The applicant has also prayed for the direction to the respondent to arrange for temporary electric connection in the above premises which is purchased by the applicant in auction sale through Court.

2. An affidavit in support of the Judge''s Summons is filed by Rameshbhai Mohanbhai Patel, an authorized Officer of the applicant.

3. This Court has issued notice on 15.01.2008. The applicant was also permitted

to join Uttar Gujarat Vij Company Limited (UGVCL), Circle Office, Sabarmati, Ahmedabad as party - respondent. Notice was duly served on the respondents. Mr. Nitin Mehta, learned advocate appears for the Official Liquidator and Mr. Premal Joshi, learned advocate appears for respondent No. 2.

4. Mr. N.K. Pahwa, learned advocate appearing for the applicant has submitted that M/s. Associated Pulp and Paper Mills Ltd. came to be wound up by order dated 8/3/2002 by this Court in Company Petition No. 157 of 2001. He has further submitted that in the auction of the assets of the company in liquidation, the applicant was found to be the highest bidder. The applicant had offered an amount of Rs. 6,56,00,000/- towards the purchase of Lot No. I i.e. land admeasuring about 2,10,513 sq. mtrs. of the company in liquidation. The Official Liquidator therefore filed OLR No. 63 of 2006 before this Court for confirmation of sale. This Court vide order dated 11/8/2006, confirmed the sale in favour of the applicant. Mr. Pahwa further submitted that apropos to the order dated 11/8/2006, the applicant paid the entire consideration of sale. The Official Liquidator addressed a letter dated 11/1/2007 to the applicant confirming the receipt of entire consideration of Rs. 6,56,00,000/- and informed the applicant that the applicant is entitled for possession of the land of the Company in Liquidation and that the possession of the land shall be handed over to the applicant on 12/1/2007 and since then, the applicant is in possession of the premises in question.

5. Mr. Pahwa has further submitted that applicant thereafter submitted an application dated 24/7/2007 to the UGVCL for giving temporary electricity connection at the site purchased by the applicant. He has further submitted that as per the terms and conditions of the order dated 11/8/2006 of this Court passed in OLR No. 63 of 2006, sale deed came to be executed in favour of the applicant, being nominee of auction purchaser on 27/8/2007. In response to the letter dated 24/7/2007, UGVCL addressed communication dated 31/8/2007 informing the applicant that an amount of Rs. 1,36,68,894.27 is outstanding against previous owner i.e. M/s. Associated Pulp and Paper Mills Ltd. and a Civil Suit No. 83 of 1999 is filed by the Recovery Officer of the UGVCL against the company in liquidation i.e. M/s. Associated Pulp and Paper Mills Ltd. In respect of said communication, applicant personally visited the office of UGVCL on several occasions for temporary electricity connection and pointed out the difficulties on account of non-availability of electricity connection. However, no heed was given by UGVCL. Therefore, applicant being the nominee addressed communications dated 28/11/2007 requesting to immediately provide electric connection at the site of the company in liquidation i.e. M/s. Associated Pulp and Paper Mills Ltd. situated at Bavla, on deposit of necessary charges.

6. Mr. Pahwa has further submitted that the applicant is not required to make payment of the statutory dues of the predecessor of the company in liquidation. He has further submitted that the dues of the electricity company are pre-winding up dues which cannot be recovered from the applicant. He has further

submitted that Clause-7 of the sale deed which is consistent with the tender document would not make the applicant liable to pay the dues of the electricity company of the pre-winding up period. As per Clause-7 of the sale deed read with terms and conditions of the tender document, the applicant is not liable to pay the dues of the electricity company of the pre-winding up period. Respondent No. 2, therefore, cannot refuse to grant fresh power connection to the applicant while insisting of payment of the dues of the company in liquidation. There is no obligation on the part of the applicant to settle the dues of the electricity company as under the terms and conditions of sale as approved by this Court, the electricity dues of the company in liquidation are to be settled by the Official Liquidator as per the provisions of the Companies Act, 1956. Despite this clear position in law, respondent No. 2 is not giving electric connection and hence, the applicant is constrained to file this application before this Court.

7. Mr. Premal Joshi, learned advocate appearing for respondent No. 2 has submitted that the Company in liquidation did not pay the dues towards electricity to respondent No. 2 and, therefore, the said electric connection was disconnected. The total outstanding amount towards electricity dues are Rs. 1,36,68,894.27. He has further submitted that respondent No. 2 has filed Civil Suit No. 83 of 1999 for recovery of outstanding dues. Since, the company in liquidation has not paid the said amount, respondent No. 2 has taken necessary legal action in the matter. From the auction of the assets of the company in liquidation, the applicant has purchased the property. The applicant has applied for temporary connection and after receipt of the application from the applicant, report was sent to the Circle Office. Since the outstanding amount has not been paid, the electric connection cannot be given to the applicant. Unless and until the outstanding dues of the Company in liquidation are paid, the applicant has no right to ask for electric connection.

8. Mr. Nitin Mehta, learned advocate appearing for the Official Liquidator has submitted that the position in law is very clear. Respondent No. 2 cannot insist for payment for the purpose of granting connection to the applicant. So far as the outstanding dues of the respondent No. 2 from the Company in liquidation are concerned, the respondent No. 2 will have to lodge its claim before the Official Liquidator and the applicant has to stand in queue and after payment to the secured creditors and workers, if any surplus remains, from that amount, the preferential payment will be made to the respondent No. 2 u/s 530 of the Companies Act, 1956.

9. Having heard learned advocates appearing for the respective parties and after having gone through the application, earlier order of this Court, terms and conditions of the tender and the relevant statutory provisions, the Court is of the view that respondent No. 2 is not justified in denying the electric connection to the applicant on the ground of outstanding dues of the Company in liquidation. Clause-7 of the sale deed which is based on the tender document is very clear. It

says that liability to pay land revenue, Municipality Taxes, Education Cess or any other charges and levies after the date of winding up order till the execution of this deed of conveyance, shall be born by the purchaser and thereafter, the said taxes, charges, cesses and dues are to be born by the purchaser. The payment of all dues recorded in the revenue records, city survey records, income tax or sales tax records etc. for the said land up to liquidation period shall be settled as per the provisions of the Companies Act, 1956. The purchaser shall be liable to pay statutory dues if any due and payable on the said land of the Company in liquidation for the period after the date of winding up order. The payment of all future rates, assessments, taxes, dues, lease rents, covenants and conditions as contained in the herein before recited Indenture of Lease, to be paid, observed and performed by the Purchaser. There is no doubt about the fact that the alleged outstanding dues of respondent No. 2 are pertaining to the pre-liquidation period. Considering the overriding provisions of Section 529 529A read with Section 530 of the Companies Act, the dues of the electricity Company are required to be settled by the Official Liquidator in order of priority as provided for in the said provisions. Under no circumstances, the present applicant can be compelled to pay the said dues nor there should be any condition precedent to the effect that the electric connection can be given to the present applicant only on payment of the said pre-liquidation outstanding dues of the Company in liquidation.

10. This Court has at great length discussed this issue in its order dated 18/1/2008 passed in Company Application No. 554 of 2007 wherein also, the pre-liquidation dues in the form of sales tax liabilities were outstanding. The Court considering all the relevant aspects of the matter as well as statutory provisions and decided case law on the subject, has taken the view that once the sale consideration has been paid by the purchaser pursuant to the order of the Court passed while confirming the sale in his favour, such purchaser cannot be saddled with the liability of arrears of sales tax dues. Such purchaser will get clear title over the property without any charge or encumbrance even if there is an attachment by the sales tax authority. The Court further observed that the present case is governed by the provisions contained in the Companies Act, 1956 and priorities are to be decided in accordance with the provisions of the Companies Act. Considering the provisions of Section 529 529A & 530 of the Companies Act, 1956, the order of settlement of priority claim of the Creditors of the Company in liquidation will have to be made. Since the electricity dues of the respondent No. 2 fall within the ambit of Section 530 of the Companies Act, 1956 being the preferential Creditors, they will be paid in accordance with the priority claim to be decided after considering the provisions of Section 529 529A and 530 of the Companies Act, 1956.

11. Following aforesaid decision, this Court has also decided this very issue of payment of outstanding dues of the electricity company in Company Application No. 11 of 2008 in the case of Shah Mohanlal Kajodimal v. Official Liquidator of Sandeep Industries Ltd and Anr. on 3/3/2008 and it was held that the electricity

dues of respondent No. 2 fall within the ambit of Section 530 of the Companies Act, 1956 being a preferential Creditor and hence, they will be paid in accordance with the priority claim to be decided after considering the provisions of Section 529 529A and 530 of the Companies Act, 1956.

12. The Court is, therefore, of the view that the action of respondent No. 2 Company in not giving temporary or permanent connection to the present applicant on the ground that the outstanding dues of the erstwhile owner are not paid by the applicant, is contrary to the provisions of law as well as the law laid down by this Court.

13. This application is, therefore, allowed with a direction to the respondent No. 2 that the applicant should not be denied the electric connection only on the ground that the dues of the Company for pre-liquidation period are outstanding. If the applicant is prepared to comply with all the conditions including payment of necessary installation charges and other charges, the applicant will have to be given such electric connection.

14. Subject to the aforesaid direction and observation, this application is accordingly allowed to the aforesaid extent.

