(2018) 03 DEL CK 0185

In the Delhi High Court

Case No : Company Petition No. 307 Of 1999

Minnie Pan (India) P. Ltd — APPELLANT

Vs

M/S Eurobike Ltd — RESPONDENT

Date of Decision : 13-03-2018

Acts Referred:

Citation : (2018) 03 DEL CK 0185

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Rachit Mittal, Tanvi Aggarwal, Mukesh Kumar Singh, Sonal Kumar Singh, Arjun Singh Bhati, Isha Khanna

Judgement

Jayant Nath, J

CA No. 122/2015 and 1258/2006

1. CA No. 122/2015 has been filed by the Auction Purchaser-M/s. Real Contracts Pvt. Ltd. seeking a direction to the Noida Authority for transferring/mutation of the property bearing No. C-6, Phase II, Noida U.P. in favour of the applicant on payment of transfer charges as recorded by this court in its order dated 29.07.2004.

2. CA No. 1258/2006 is filed by UPFC for modification of the order dated 29.07.2004.

3. Some of the brief facts are that the respondent Company-M/s. Eurobike Ltd. went into winding up some time in 1999. The OL took charge of the assets of the company on 06.10.1999. It is the case of the UPFC that it is a secured creditor and the property in question i.e. C-6, Phase II, Noida U.P. was charged to it. This court on 13.12.2001 permitted the OL to dispose of the said property by way of auction.

4. It is in this background that some of the orders passed by this court would be relevant. On 20.11.2003, this court had noted that sale proclamation had been

issued by UPFC in respect of the said property and only one offer had been received. Earlier, efforts were made seven times but only one tender was received which was considered to be on the lower side. This court had noted that four persons, namely, Sh. Dinesh Verma, Sh.Hem Singh Rana, Sh. Mohd. Tariq and Smt. Sadhna Kumar had initially made an offer of Rs.4.01 crores jointly but when UPFC contacted the said bidder, they upped their bid to Rs.4.25 crores (now the applicant Company in CA 122/2015 as the rights of bidder now vest in the said Company). This court accepted the aforesaid bid of Rs.4.25 crores. Other consequential directions regarding the government dues were also noted. It was ordered that all dues including the government dues in respect of the property would be payable by the Auction Purchaser from the date when the possession of the same is handed over to the Auction Purchaser. It was also made clear that the sale is on "as is where is" basis. Thereafter, on 29.07.2004 this court confirmed the sale in favour of the Auction Purchaser and directed UPFC to hand over possession of the property. This court also noted the earlier order dated 20.11.2003 whereby this court had directed that the government dues in respect of the property shall be payable by the Auction Purchaser from the date when the possession is received. This court held that it is thus clear that till the giving of possession of the property to the Auction Purchaser, the liability to clear the dues would be that of UPFC including the outstanding dues of Noida Authority. Thereafter, UPFC has filed the present application being CA No. 1258/2006 sometimes in October 2006, namely, two years thereafter, claiming that the liability of NOIDA cannot be thrust on UPFC. It may be noted that when this application came up for hearing on 19.10.2006, a submission was recorded of learned counsel for UPFC that he is not asking the Auction Purchaser to make payment of dues payable to NOIDA Authority, Trade Tax Department, etc.

5. I may also note few other facts. On 18.08.2004, possession of the property was handed over to the Auction Purchaser. Thereafter on 26.10.2004, a sale deed was executed and registered by UPFC in favour of M/s. Real Contracts Pvt. Ltd.-Auction Purchaser.

6. The bone of contention between the parties is the dues of Noida Authority. Noida Authority, has filed an affidavit dated 24.01.2018 whereby the breakup of the dues is given. It has been pointed out that the total outstanding dues including interest are Rs.32,14,76,463.49/- for the period 02.01.1995 i.e. date of allotment till possession was given to the auction purchaser i.e. 17.08.2004. This includes lease rent from 15.03.1995 to 14.03.2003 and instalments payable from 15.03.1995 to 17.08.2004 which come to a total of Rs.1,55,83,564/- plus interest. Subsequent to handing over possession of the property, a sum of Rs.1.71 crores is claimed by Noida Authority on the same grounds including interest. Noida Authority has refused to carry out mutation of the property in the name of the Auction Purchaser unless these dues are cleared. The controversy is as to who is liable to pay these dues.

7. I have heard learned counsel for the Auction Purchaser and learned counsel

for UPFC and NOIDA.

8. Learned counsel appearing for the Auction Purchaser has apart from order dated 20.11.2003 and 29.07.2004 also relied upon the orders of this court dated 01.08.2011, 04.02.2016 and 21.04.2016 to support his submissions that in terms of the order of this court, it was always understood that the liability to pay the dues of Noida Authority is that of the UPFC till the date of possession.

9. Learned counsel appearing for UPFC has made the following submissions:-

(i) He submits that being a secured creditor, UPFC was outside the process of winding up. As it was outside the process of winding up, no liability can arise on UPFC other than the payment of dues of workmen.

(ii) He relies upon the judgment of the Supreme Court in the case of AI Champdany Industries Ltd. vs. The Official Liquidator & Anr., 2009 (4) SCC 486 to submit that when the original directions were made accepting the auction bid on 20.11.2003, it was clearly stated that the sale is on "as is where is" basis. Reliance is placed on the aforesaid judgment to contend that the liability to pay this amount would be that of the Auction Purchaser.

10. I may first look at the order of this court dated 20.11.2003. This court had while accepting the bid of the Auction Purchaser made the following observations regarding the government dues:-

"It is also made clear that all dues including the Government dues is respect of the property in question shall be payable by the auction purchasers from the date when the possession of the same is handed over to the auction purchasers. It is also made clear that the aforesaid sale is on "as is where is" basis. It shall be open to the auction purchasers to deploy their own security in the aforesaid property in addition to the security already provided."

11. Similarly, on 29.07.2004 after the entire consideration had been paid by the Auction Purchaser, this court confirmed the sale in favour of the Auction Purchaser and directed UPFC to hand over possession of the property to the Auction Purchaser. The relevant directions in this regard are as follows:-

"..... Mr. Bansal has drawn my attention to an order dated 23rd November, 2003 passed in this case wherein it was made clear that all dues, including government dues in respect of the property in question shall be payable by the Auction Purchaser from the date when the possession of the same is handed over to the Auction Purchaser. It is thus, clear that till the giving of possession of the property to the Auction Purchaser the liability to clear the dues would be that of UPFC, including outstanding dues of Noida Authority, if any. It is, however, clarified that as far as transfer charges are concerned, the same shall be borne by the Auction Purchaser. UPFC shall issue necessary sale certificate and also execute documents of transfer etc. It is stated by learned Counsel appearing for the workmen as well as counsel for the O.L. that UPFC be directed to deposit the amount of sale consideration with the O.L. Learned Counsel for the UPFC submits that UPFC being a secured creditor is allowed to remain outside the winding up proceedings and he wants some time to argue on this aspect of the matter."

12. As noted above, while passing the order dated 29.07.2004, a clear direction was given that till the date of giving of possession to the Auction Purchaser, the liability to pay dues would be that of UPFC including the outstanding dues of Noida Authority. It is two years after this order was passed that UPFC has now moved the present application being CA No. 1258/2006. It may be noted that the order dated 29.07.2004 was passed in the presence of counsel for UPFC but was never challenged before the appellate court. UPFC has also taken the Sale Consideration of Rs. 4.25 crores and has also executed a registered sale deed in favour of the auction purchaser on 26.10.2004. Further, when CA No. 1258/2006 was moved, learned counsel for UPFC clearly made a submission that he is not asking the Auction Purchaser to make payment of dues payable to NOIDA Authority.

13. By subsequent orders, despite pendency of CA No. 1258/2006 this court opined that the liability to pay the dues of NOIDA before receipt of possession is of UPFC. On 04.02.2016 this court had noted as follows:-

"4. In my view, auction purchaser, if at all, can be held liable for dues after the date of possession. Mr. Dhruv Gupta says that he has instructions to convey to the Court that the auction purchaser would be willing to pay the dues of the authority accumulated after the date of possession. In other words, in short, Mr. Dhruv Gupta says the sum demanded by the authority qua the auction purchaser i.e. Rs. 1,71,20,537.96/-, can be paid.

xxx

4.2 In so far the balance dues are concerned, according to me, these can be paid to the Authority if, at all, either from the funds of the company (in liquidation) or, by calling upon the secured creditors to defray the liability. This aspect of the matter will be examined on the next date of hearing."

14. Subsequently on 21.04.2016, this court noted as follows:-

"Counsel for the NOIDA Authority submits that pursuant to the orders passed by this Court on 04.02.2016, his instructions are that the Authority is willing to accept the payment ofRs.l,71,20,537.96 as due and payable as on 31.03.2015 whilst reserving its right to recover all further amounts that are due and payable thereafter towards the auctioned property from the Auction Purchaser. At the same time, the NOIDA Authority reserves its right to recover all its dues before 18.08.2004, when the property was handed over to the Auction Purchaser from the UPFC.

Counsel for the Auction Purchaser reiterates his client's instructions that it is willing to pay the amount of Rs.l,71,20,537.96 to the NOIDA Authority provided the necessary documents passing title to his client are executed by the Authority.

Looking to the circumstances, and in view of the fact that certain objections from UPFC remain to be considered, I consider it appropriate to direct the Auction Purchaser to deposit the amount of Rs.l,71,20,537.96 with the Registrar General of this Court within six weeks from today, who shall place that amount in an interest bearing account subject to further orders of this Court."

15. Pursuant to the above directions, the Auction Purchaser has deposited a sum of Rs.1,71,20,537.96/- in this court which has been placed in a fixed deposit.

16. It is manifest from a reading of the above orders that it has been duly directed by this court by repeated orders that it is UPFC who has to pay the dues of the Noida Authority upto the date the possession was given to the Auction Purchaser. This is clear from orders dated 29.7.2004, 4.12.2016 and 21.4.2016. At this stage, UPFC cannot be permitted to seek revocation or modification of the said orders passed. This is especially so as the application to modify the original order dated 29.7.2004 was made two years thereafter and after having accepted the entire bid amount of Rs.4.25 crores without protest and having executed a registered sale deed in favour of the auction purchaser.

17. I may deal with some of the contentions of the UPFC. It has been pleaded that the original auction was done on as is where is basis and hence the liability to pay the dues of NOIDA even prior to the auction date are that of the auction purchasers. This plea is wholly without merit in as much as it runs contrary to the orders of this court dated 29.07.2004. It is pursuant to the said order dated 29.07.2004 that the auction was confirmed and UPFC has received the sale consideration and has handed over physical possession of the property and has also executed and registered a sale deed in favour of the auction purchaser. The UPFC cannot undo the entire process as is sought to be done.

18. There is no merit in CA No. 1258/2006 and the same is dismissed.

19. UPFC has received a sum of Rs.4.25 crores from the Auction Purchaser. As per the directions of this court passed on 01.08.2011, UPFC was directed to retain the amount which had been realised from the sale of assets till the application towards the claims of Noida is decided. No doubt with the passage of time, the Noida Authority is now demanding a sum which is perhaps far more which has been received by UPFC. I cannot help noticing that both the authorities, namely, UPFC and Noida Authority are controlled by the State of UP. It would be for the two organisations to settle their disputes.

20. The entire controversy is regarding the amount due on account of the dispute between the two government organisations. UPFC has received a sum of Rs.4.25 crores from the bid amount way back in 2004 which it has been enjoying. As already noted above, it is the liability of UPFC to pay the entire dues of Noida Authorities till the date possession was handed over to the auction purchaser which is 18.8.2004. Dues on account of instalments or lease subsequent thereto would be those of the auction purchaser. The principal amount of the instalment plus lease rent payable by UPFC for dues of Noida prior to the possession being

handed over to the auction purchaser is only Rs.1.56 crores. It is for the UPFC to approach Noida Authority to waive off the overdue interest keeping in account the fact that the application filed by UPFC being CA 1258/2006 has been pending adjudication before this court. Both being the instrumentalities of the same State government, it is expected that Noida Authority would take a lenient view of the matter in the facts of the case.

21. UPFC is directed to deposit a sum of Rs.1.56 crores with the Noida Authority within 12 weeks from today. The Registrar General of this court is also directed to release the amount of Rs.1,71,20,537.96/- deposited by the auction purchaser pursuant to order dated 21.04.2016 along with accumulated interest to the Noida Authority. Any other charges for transfer payable by the auction purchaser shall also be paid by him. The Noida Authority shall carry out the necessary mutation in favour of the Auction Purchaser within six months from today. CA 192/2015 and CA 1258/2006 are disposed off as above.

CA No. 1946/2011 and 473/2014

In view of the above orders, these applications have become infructuous.

CA No. 2564/2016

For the reasons stated in the application, the cost is waived off.

The application is disposed of.

CA No. 1291/2012

List on 23.07.2018

