

(2020) 03 MP CK 0175
In the Madhya Pradesh High Court
Case No : COMA No. 1 Of 2020

M.P. Industrial Development Corporation	APPELLANT
Vs	
Ms/ Nirvi Engineering & Consultancy Pvt. Ltd. & Another	RESPONDENT

Date of Decision : 12-03-2020

Acts Referred:

Madhya Pradesh Industrial (Allotment Of Sheds, Plots And Land) Rules, 1974 — Rule 147, 148, 149
Madhya Pradesh Rajya Audyogik Bhumi Evam Bhawan Prabandhan Niyam, 2015 — Rule 18(b)(iii)

Citation : (2020) 03 MP CK 0175

Hon'ble Judges : S. C. Sharma, J; Shailendra Shukla, J

Bench : Division Bench

Advocate : Bhakti Vyas

Judgement

Heard.

The present company appeal is arising out of the order dated 27.11.2019 passed in Company Petition No.12/1996 in the matter of DCM Shriram vs. M/s Rank Plastic Industries Pvt. Ltd. vs. M. P. Industrial Development Corporation & others.

The facts of the case reveal that an interlocutory application was preferred in Company Petition No.12/1996 for issuance of an appropriate writ or order directing M. P. Industrial Development Corporation (MPIDC), Indore to execute the transfer deed in respect of Plot No.11, Industrial Area, Sector-III, Sagour Kuti Road, Pithampur, Dhar (MP) in the name of respondent No.1 - M/s Nirvi Engineering & Consultancy Pvt. Ltd., without demanding the arrears of earlier dues prior to the auction sale.

It was stated in the interlocutory application that an auction took place in respect of assets (Lot No.1) comprising the lease hold rights of industrial land and buildings as described in the auction notice and the respondent No.1 was successful bidder for auction purchase as he has quoted Rs.60,72,000/-. The auction was confirmed by the learned Company Judge in favour of the

respondent vide order dated 06.09.2016 and the same price was duly deposited by the respondent and the Official Liquidator has also handed over possession of the assets to the respondent on 21.09.2016. That the Company Court vide order dated 02.04.2018 has permitted the execution of conveyance deed in the name of nominee, who was respondent No.1 before the Company Judge namely, M/s Nirvi Engineering & Consultancy Pvt. Ltd. and the said order was modified on 04.09.2018. The Official Liquidator has executed the conveyance deed on 22.11.2018 and thereafter, a request was made to MPIDC to transfer the lease of the industrial land purchased by the respondent in the name of M/s Nirvi Engineering & Consultancy Pvt. Ltd. The MPIDC has refused to transfer the lease and demanded a sum of Rs.18,56,170/- from the respondent towards various charges, which included a sum of Rs.12,24,656/- towards the unpaid arrears by the previous lease holder. Before the Company Judge, the dispute was only in respect of Rs.12,24,656/-, which was the arrears of the previous lease holders.

The MPIDC before the Company Court took shelter of the M.P. Industrial (Allotment of Sheds, Plots and Land) Rules, 1974 as modified from time to time and also the M. P. State Industrial Land and Industrial Building Management Rules, 2015.

Learned Single Judge, after hearing the parties at length, in paras-9 to 15 has held as under :-

9/ At the outset it would be relevant to mention that learned counsel for the applicant has not disputed that the other amounts which are mentioned in the notice dated 18.3.2019 is payable by the applicant, but he has raised a dispute only in respect of Rs.12,24,656/- which was in respect of the unpaid arrears of the previous unit. The auction notice dated 3.2.2016 issued by the OL contains the following condition in respect of liability to pay the tax dues and other charges:-

"17. The successful purchaser shall pay the Stamp Duty, Cess, Registration Charges and other charges for registration of Deed of Conveyance/Sale 4 COMP No.12/96 Deed or other documents, if any, for transfer of assets/properties in his/her/their name. If any taxes, cess, duties, fee and other charges whatever in nature arise after date of confirmation of sale of assets/properties or demanded by any authority (Government, semi-Government, Corporation/ Municipality, Panchayat etc.), the successful purchaser shall be liable to pay the same and such payment will not be claimed by the successful purchaser from the office of the Official Liquidator."

10/ In terms of the aforesaid clause, the applicant was liable to pay the taxes, dues, fee and other charges of whatever nature arising only after the date of confirmation of sale. In this case the sale was confirmed on 6.9.2016, therefore, the applicant is liable to pay all the aforesaid charges arising with effect from the said date. In terms of this clause there is no liability to pay the charges arising prior to the date of confirmation of sale. The OL has executed the conveyance

deed in favour of the applicant and the said conveyance deed contains the following clause:-

"10. That the dues of any of the company (In-Liqn) up to date of winding up order passed by the Hon'ble High Court of Madhya Pradesh, Indore Bench will be treated as debt/claim against the company (In-Liqn) and may be dealt by the vendor (Official Liquidator) in accordance with law subject to approval of Hon'ble High Court of M.P., Indore Bench. The vendee/ auction purchaser/ Nominee of the auction purchaser shall liable to pay all dues relating to Government/ Semi-Government/Local/authorities / Other statutory dues, if any arises From the date of confirmation of sale of above assets/properties Of the Company (In-Liqn) By the Hon'ble High Court of Madhya Pradesh, Indore Bench i.e. From 06/09/2016."

11/ The above clause also restricts the liability of the applicant to pay the taxes, dues and other charges arising with effect from the date of confirmation of sale.

12/ It has also been pointed out that the OL in terms of Rule 147, 148 and 149 of the Company (Court) Rules had invited claims by duly publishing notice but no such claim was raised by the MPIDC. As per the submission of counsel for MPIDC, these charges relate to the period with effect from 1995. If the same were recoverable by the MPIDC from the Company-in-Liquidation, then the claim ought to have been made before the OL.

13/ Counsel for the MPIDC has placed reliance upon Rule 18(b)(iii) of M.P. Rajya Audyogik Bhumi Evam Bhawan Prabandhan Niyam, 2015, but the said rule is applicable to the original lease holder or new allottee, whereas the applicant in the present case is a transferee whose application was not for new allotment but was only for transfer of lease in his favour in pursuance to the purchase of lease hold right in auction.

14/ Counsel for the applicant has also placed reliance upon the judgment of the Supreme Court in the matter of AI Champdany Industries Limited Vs. Official Liquidator and Another reported in (2009) 4 SCC 486, wherein it has been held that law imposes no obligation upon purchaser to enquire into liabilities other than those which would impede value of property. He has also placed reliance upon the judgment of this Court in the matter of Mahaveer Enterprises Vs. State of M.P. and others reported in 2008(4) MPLJ 278, wherein it has been held that the liability of the original borrower company cannot, by any stretch of imagination, be fasten upon the auction purchaser. He has also placed reliance upon the judgment of this Court in the matter of Millenium Structural (India) Ltd. Vs. Commercial Tax Officer reported in LAWS(MPH)-2009-2-63, wherein it has been held that after the purchase of the property sold by the State Financial Corporation under Section 29 of the Act, a purchaser acquires the property free from all encumbrances and Commercial Tax Department could not initiate recovery proceedings for recovery of commercial tax dues from the erstwhile owner, by sale of the purchased property. Counsel for the MPIDC has placed reliance upon the order dated 4.1.2019 passed in MP No.19271/2017 and order

dated 2.8.2015 passed in WP No.2635/2011 but in none of these cases it has been laid down that though as per the auction notice and the conveyance deed the liability does not fall on the auction purchaser, yet he is liable to make payment of the arrears of earlier defaulter.

15/ Having regard to the aforesaid analysis, I am of the opinion that MPIDC is not justified in demanding the sum of Rs.12,24,656/- from the present applicant in respect of the arrears for the period prior to the confirmation of sale. Hence, IA No.2190/2019 is allowed and the impugned demand of Rs.12,24,656/- contained in the letter dated 18.3.2019 is set aside. The MPIDC is directed to execute the transfer deed in favour of the applicant after receiving the other amounts reflected in the said letter and complete the formalities within a period of 30 days from the date of receipt of certified copy of this order.

The undisputed facts reveal that the auction notice dated 03.02.2016 by the Official Liquidator as per the directions of this Court (Company Court) was issued with a condition that the successful purchaser shall pay stamp duty, cess duty, registration charges and other charges for registration of deed of conveyance/sale deed. It was nowhere mentioned in the auction notice that the successful purchaser shall also be liable to pay the outstanding dues of the previous lessee and in those circumstances, the Company Court has allowed the application and directed the MPIDC to execute the transfer deed.

In the considered opinion of this Court, the order passed by the Company Judge does not warrant any interference. If there is an outstanding amount still remaining to be recovered by the MPIDC, there is a remedy available to the present appellant. The present appellant can certainly file a claim in respect of the remaining amount before the Company Court in respect of the company petition which is pending. This Court does not find any reason to interfere with the order passed in Company Petition No.12/1996 dated 27.11.2019.

The admission is declined.