
(2016) 07 SC CK 0093

In the Supreme Court Of India

Case No : Civil Appeal No. 9593 of 2010

M/s Chem Solar Energy System Private Limited

APPELLANT

Vs

Karnataka State Financial Corporation & Ors.

RESPONDENT

Date of Decision : 14-07-2016

Acts Referred:

Citation : (2016) 7 Scale 112

Hon'ble Judges : Ranjan Gogoi and Prafulla C. Pant, JJ.

Bench : Division Bench

Advocate : Mr. R.S. Hegde, Mrs. Farhat Jahan Rehmani, Mr. Shanti Prakash and Mr. Rajeev Singh, Advocates. in Civil Appeal No. 9593 of 2010, Mr. E.C. Vidya Sagar, Mr. Subashchandra Sagar and Ms. Jennifer John, Advocates. in Civil Appeal No. 9594 of 2010, for the Appellant; Mr. Naveen R. Nath, Advocate, Mr. Basava Prabhu S. Patil, Sr. Advocate, Mr. Purushottam Sharma Tripathi, Mr. Anirudh Sanganeria, Mr. Chinmay Deshpande, Mr. Amjid Maqbool, Mr. Vijay Kumar, Mr. S. Nandakumar, Mr. Parivesh Singh, Mr. P. Srinivasan, Mr. Prateek Gupta and Mr. Ranjeet Singh, Advocates. in Civil Appeal No. 9594 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant ? M/s Chem Solar Energy System Private Limited (hereinafter referred to as "the borrower") in Civil Appeal No. 9593 of 2010 is the borrower whereas the appellant in Civil Appeal No. 9594 of 2010 is the Karnataka State Financial Corporation (hereinafter referred to as "the Corporation"). Both the appellants are aggrieved by the order dated 9th January, 2009 passed by the Division Bench of the High Court of Karnataka in Writ Appeal No. 679 of 2008. The Division Bench of the High Court, by the impugned judgment and order, has set aside the order of the learned single judge of the High Court dismissing the writ petition filed by the purchaser ? respondent No. 3 ? M/s Sri Lakshminarayana (hereinafter referred to as "the third respondent") seeking interference with the actions of the Corporation in cancelling the sale made in favour of the purchaser and ordering a fresh auction. The core facts which are

required to be noticed may be briefly enumerated hereunder.

2. In respect of unpaid dues of the borrower (appellant in Civil Appeal No. 9593 of 2010) the secured properties were put up for auction. Three earlier auctions did not yield any positive result. In the fourth auction, one Mr. Sanjay Goel offered an amount of Rs. 50,00,000/- (Rupees Fifty lakh) after negotiations were held with all the bidders. When it came to payment, the aforesaid bidder (Mr. Sanjay Goel) failed to make any payment and, therefore, the offer was cancelled and the earnest money was forfeited. At this stage, it appears that the third respondent appeared in the scene and offered a sum of Rs. 50,00,000/- (Rupees Fifty lakh) for the property as offered by the highest bidder Sanjay Goel. It also appears from the records placed before us by the Corporation that the authorities in the Corporation took two different views of the matter; one favouring a fresh auction and the other favouring acceptance of the offer made by the third respondent. The Managing Director, as it appears from the Note-sheets placed before the Court, though initially was in favour of a fresh auction, subsequently, thought it proper to seek the opinion of the Legal Officers of the Corporation and, in principle, accepted the offer of the third respondent subject to the legal opinion which was sought for. The legal opinion was to the effect that there is no bar for acceptance of the offer made by the third respondent. Consequently, an acceptance letter dated 28th May, 2005 was issued intimating the third respondent that the offer made by it has been accepted and it was required to deposit the sum of Rs. 50,00,000 (Rupees Fifty lakh) in two instalments, namely, Rs. 27.00 lakhs on or before 31st May, 2005 and balance payment on or before 15th June, 2005. Both the payments/instalments were made by the third respondent within the time frame fixed in the aforesaid letter dated 28th May, 2005. As the sale deed was not being executed, the third respondent moved the High Court. During the pendency of the writ proceedings in question, the Corporation, on the basis of the decision of the Managing Director, cancelled the sale made in favour of the third respondent and proceeded to issue a fresh auction notice. The aforesaid actions of the Corporation were without any prior notice to the third respondent. It, therefore, sought an amendment of the writ petition to challenge the said actions of the Corporation which was allowed. Pursuant to the auction notice which was issued, several bidders participated and an offer of Rs.1.06 crore was received as the highest offer.

3. The learned single judge of the High Court dismissed the writ petition primarily on the ground that the matter pertained to the realm of contract and exercise of the discretionary jurisdiction under Article 226 of the Constitution of India would not be proper. Aggrieved, the third respondent moved the High Court by way of a Writ Appeal which having been answered in its favour, the borrower and the Corporation have instituted the present proceedings before this Court.

4. We have heard the learned counsels for all the contesting parties.

5. Notwithstanding the voluminous record and the elaborate arguments, the matter would lie within a short compass. The legality and correctness of the sale

made in favour of the third respondent and the actions of the Corporation in this regard including the price offered and received has to be judged in the context of the facts that had occurred in the year 2005 and not by subsequent events or the price of the property or its potential as on date. We have indicated in a previous part of the order that three earlier attempts to sell the property by auction had failed and, in fact, the fourth attempt of auction had also failed. In the fourth attempt it is not in the bidding process but in the negotiations held subsequently with all the parties that one of the bidders i.e. Sanjay Goel had offered the sum of Rs. 50,00,000 (Rupees Fifty lakh). He, however, did not follow up the said offer by making actual payment. It is in such a situation that the third respondent appeared in the field and as the letter dated 31st March, 2005 would indicate it was brought to the field at the instance of the borrower (appellant in Civil Appeal No. 9593 of 2010). The third respondent offered and the Corporation accepted the sum of Rs. 50,00,000/- (Rupees Fifty lakh) in two instalments. There is a finding of the High Court in this regard that out of the first instalment of Rs. 27.60 lakhs the loan account was adjusted and the balance amount was credited to a separate account (ARPA). It is also clear from the impugned order of the High Court that the subsequent amount of Rs. 22.40 lakhs was also kept in the aforesaid separate account (ARPA-8008). The Managing Director of the Corporation though had earlier suggested a fresh auction (which was held but the offers/bids were not opened) had subsequently thought that the offer of the third respondent could be accepted subject to obtaining the necessary legal opinion. The legal opinion favoured acceptance. It is in these circumstances that the letter dated 28th May, 2005 (signed by the Dy. General Manager of the Corporation) was issued to the third respondent intimating the decision of the Corporation to accept the offer of the said respondent and requiring it to pay the sum of Rs. 50,00,000/- (Rupees Fifty lakh) in two instalments within a particular time frame. All such stipulations were complied with by the third respondent. The cancellation of the sale made in favour of the third respondent and the notice of fresh auction was at a point of time subsequent to the institution of the writ proceedings by the third respondent for a direction from the High Court to the Corporation for execution of the sale deed in its favour. Such cancellation was also not preceded by any notice or opportunity to the third respondent despite the fact that it had paid a sum of Rs. 50,00,000/- (Rupees Fifty lakh) to the Corporation. In the auction held after the purported cancellation was made by the Managing Director, though an offer of Rs. 1.06 crore was received from one M/s H.M. Estate & Properties no payment by the said offerer or even part payment had been made. The aforesaid offer of Rs. 1.06 crore was made in the year 2005 and whether such an offer is still open is not known to the Court. Though suo motu notice was issued by the Court to M/s H.M. Estate & Properties in the present proceedings, the said party has chosen not to come to Court in spite of due service of notice. In contrast, one M/s Pinnacle Enterprises who had participated in one of the earlier auctions has been impleaded as a respondent on the basis of an application filed before the Court. It also would require to be noticed that the price offered by the third respondent

(Rs. 50 lakhs) was commensurate with the valuation of the property done in the year 2004 at Rs. 53.60 lakhs (approximately). It is taking into account all the aforesaid facts that the High Court had thought it proper to reverse the order of the learned single judge and issue the impugned directions for handing over the possession of the property to the third respondent and for execution of the sale deed.

6. Having considered the matter and having taken into account all the aforesaid facts we are of the view that the action of the Corporation in accepting the offer of the third respondent was just, fair and reasonable. Even in the fact situation as on date we do not find any room to take a contrary view. The third respondent has paid the agreed amount as far back as in the year 2005. It is yet to get possession of the property which has remained with the Corporation. There is no viable alternative offer on record to persuade us to reexamine the matter. Even though the borrower himself had, at one stage, offered an amount of Rs. 6,11,00,000/- (Rupees Six crore and eleven lakh) no deposit of any amount, as ordered by the Court, had been made by the borrower (appellant in Civil Appeal No. 9593 of 2010). Taking into account all the above we are of the view that both the appeals challenging the order of the Division Bench of the High Court deserve to be dismissed which we accordingly do. The order dated 9th January, 2009 passed by the Division Bench of the High Court in Writ Appeal No. 679 of 2008 is affirmed. The Corporation will now carry out the directions of the High Court forthwith and in any case within a period of six weeks from today.

7. Before parting we would like to observe that Shri R.S. Hegde, learned counsel for the borrower (appellant in Civil Appeal No. 9593 of 2010) has placed before the Court a decision of this Court in Divya Manufacturing Company (P) Ltd. v. Union Bank of India and others [(2000) 6 SCC 69] to contend that a higher offer that is available ought to be accepted even after the sale is confirmed and the sale certificate is issued.

Shri Basava Prabhu S. Patil, learned Senior Counsel appearing for the third respondent has sought to controvert the above by relying on the decision of this Court in Vedica Procon Private Limited v. Balleshwar Greens Private Limited and others [(2015) 10 SCC 94] [Paragraphs 38 and 47] wherein the decision in Divya Manufacturing Company (P) Ltd.(supra) has been considered.

It will not be necessary for the Court to enter into the aforesaid area of contentions and arguments as what cannot be overlooked is the fact that a period of over 10 years have elapsed in the meantime and none of the higher offers including the one made by the borrower (appellant in Civil Appeal No. 9593 of 2010 before this Court) have been followed up by actual payment so as to inspire the confidence of the Court. In fact, as we have already indicated that on date we do not have before us any other viable counter or higher offer.

8. Shri Hegde also urged before the Court that there has been some excess payment on behalf of the borrower to the Corporation which may be refunded.

We are afraid we cannot go into the said issue as not only the said question is disputed but the same is beyond the scope of the dispute entertained and decided by the High Court. If the borrower (appellant in Civil Appeal No. 9593 of 2010 before this Court) has any claim in this regard, it will naturally be open to it to approach the competent forum for the enforcement thereof.

9. Consequently and in the light of the above, both the appeals are dismissed. The order dated 9th January, 2009 of the High Court in Writ Appeal No. 679 of 2008 is affirmed.