

(2020) 01 JH CK 0215

In the Jharkhand High Court

Case No : Company Petition No. 01, 02, 04 Of 1979 (R), I.A. No.3745 Of 2015, 9797 Of 2019

M/s Karanpura Mining Corporation And Ors M/s Nalanda Ceramics & Industries Ltd

Date of Decision : 16-01-2020

Acts Referred:

Citation : (2020) 01 JH CK 0215

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Sachin Kumar, Himanshu Kr. Mehta, A.K. Yadav, Amit Kumar, Manish Kumar, Kislaya Prasad

Final Decision : Disposed Of

Judgement

I.A. No.3745 of 2015 with I.A. No.9797 of 2019

1. Heard Mr. H.K. Mehta, learned counsel appearing on behalf of the official liquidator.
 2. Heard Mr. Sachin Kumar, learned counsel appearing on behalf of the auction purchaser, who has filed I.A. No.3745 of 2015 and I.A. No.9797 of 2019 in C.P. No.01 of 1979 (R).
 3. Heard Mr. A.K. Yadav, learned counsel appearing on behalf of the Bihar State Finance Corporation (BSFC).
 4. Heard Mr. Rajesh Kumar and Mr. Amit Kumar, learned counsels appearing on behalf of State Bank of India (SBI) and Industrial Finance Corporation of India (IFCI).
 5. Heard Mr. Manish Kumar, learned counsel appearing on behalf of the Industrial Development Bank of India (IDBI).
 6. Heard Mr. Kislaya Prasad, learned counsel appearing on behalf of Employee Provident Fund Organization (EPFO).
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7. It is submitted by the learned counsel for the parties that today, all the secured creditors, who are involved in the present cases are being represented through their respective counsels.

8. Learned counsel appearing on behalf of the auction purchaser submits that vide order dated 21.11.2014, the applicant being the highest bidder was

declared as successful bidder and certain conditions were imposed by this Court upon the auction purchaser with regard to the schedule of payment of

the bid amount. The learned counsel submits that the property was sold for a total of Rs.203 lakhs and the amount was to be paid in 5 installments

being the last cut of date as 30.05.2015. He submits that the auction purchaser paid the 1st and the 2nd installments of Rs.40,00,000/- each as per the

time framed given by this Court, but due to some financial problem, the auction purchaser failed to deposit the 3rd and 4th installments within the time

limited prescribed by this Court. However, the applicant on 28.05.2015 paid the total amount and accordingly the entire consideration money in

connection with the sale was paid prior to the cut of date i.e., 30.05.2015. He thus submits that there has been certain default in connection with the

payment of 3rd and 4th installments, but ultimately the total payment was made within the last cut of date i.e., 30.05.2015. The learned counsel further

submits that this fact was brought to the notice of this Court by filing I.A. No.3745 of 2015 and a specific averments to the aforesaid effect was made

in para nos. 6 to 9 and in para 9, it was submitted that the delay in making the payment in connection with the installment was unintentional and that

the applicant could not move before this Court for grant of extension of time. The learned counsel further submits that the company petition itself

stood dismissed for non-prosecution on 13.05.2016 and accordingly no order was passed on I.A. No.3745 of 2015. He also submits that the entire

amount which has been deposited by the successful bidder is lying with the learned Official Liquidator and the same has not yet been distributed,

although, the claims have been lodged before the learned Official Liquidator. The learned counsel also submits that after the case was dismissed for

default on 13.05.2016, the sale deed in favour of the auction purchaser was executed by the then learned Official Liquidator on 23.03.2017. When this

fact was brought to the notice of this Court, the learned Official Liquidator filed petition for restoration of the present company petition and the

restoration application was allowed on 12.10.2019. The learned counsel submits that immediately thereafter another interlocutory application being

I.A. No.9797 of 2019 was filed by the auction purchaser on 17.10.2019 and a prayer has been made before this Court that the delay in making the

payment of 3rd and 4th installments as per the order dated 21.11.2014 be condoned and the payment made by the applicant be accepted and the sale

which has been conducted by the order of this Court, be confirmed.

9. The learned counsel submits that reply has been filed to I.A. No.9797 of 2019 by all the secured creditors and Employees Provident Fund

Organization (EPFO) has filed interlocutory application and submits that they have expressly stated that they have no objection to the prayer made by

the auction purchaser in condoning the delay in payment of money and for confirmation of sale. It is also stated in the interlocutory application filed by

EPFO that a claim has been lodged before the learned Official Liquidator and EPFO has also not expressed any objection to the prayer made in I.A.

No.9797 of 2019. The learned counsel submits that the learned Official Liquidator has also filed a reply to I.A. No.9797 of 2019 vide affidavit dated

13.01.2020 and submits that even the learned Official Liquidator does not have any objection to the prayer made by the petitioner in I.A. No.9797 of

2019.

10. The learned counsels appearing on behalf of the BSFC, IFCI, IDBI, SBI and EPFO does not dispute the submissions which have been made on

behalf of the learned counsel appearing for the auction purchaser. The learned counsel for BSFC and SBI have also stated that the auction was

conducted after much effort and the amount has already been received which is lying with the learned Official Liquidator and it would serve their

interest if their claim is ultimately adjudicated and disbursed to them.

11. The learned counsels appearing on behalf of BSFC and SBI have also submitted that the learned Official Liquidator has submitted a report that

their claim has not been adjudicated for want of documents etc., but he submits that the necessary documents have already been submitted. However,

both the counsels submits that if any date be fixed by this Court for their appearance before the learned Official Liquidator, the entire matter will be

brought to the notice of the learned Official Liquidator and if there is any deficiency in any document that may also be filed/clarified. They also submit

that a date may be fixed by this Court itself such that distribution of money takes place expeditiously. It is pointed out by the learned counsel appearing on behalf of the learned Official Liquidator that EPFO has lodged the claim before the learned Official Liquidator, but the claim was not filed within the stipulated time frame and accordingly the same cannot be taken into consideration as EPFO has not filed any petition before this Court for condonation of delay in filing the claim. Upon this, learned counsel appearing on behalf of the EPFO submits that he will take appropriate steps within a short span of time.

12. After hearing the learned counsel for the parties and going through the affidavits filed on behalf of the secured creditors, EPFO as well as learned Official Liquidator and the auction purchaser, this Court finds that the property was auction sold as per order dated 21.11.2014 and the schedule of payment was also fixed in the said order and the last instalment i.e., 5th installment was to be paid by 30.05.2015. It was also stipulated in the said order that on account of any default in payment of any instalment, the earnest money will be forfeited. It appears that the auction purchaser had defaulted in making payment of 3rd and 4th instalment, but the entire amount was paid within the cut of date i.e., 30.05.2015 and this fact was brought to the notice of this Court by filing I.A. No.3745 of 2015, but unfortunately the case itself stood dismissed for default on 30.05.2016, which was ultimately restored only on 12.10.2019 and thereafter the auction purchaser has filed another petition dated 17.10.2019 seeking condonation of delay in making payment of 3rd and 4th instalments as well as for confirmation of sale. It has also been brought on record that in the meantime, the sale deed was already executed in favour of the auction purchaser on 23.03.2017. It appears from the records of this case and arguments advanced on behalf of the parties that the secured creditors as well as EPFO and the learned Official Liquidator have no objection to the prayer made by the auction purchaser in I.A. No.9797 of 2019 so far it relates to condonation of delay in making payment of 3rd and 4th instalments and for confirmation of sale. They have submitted that the auction itself was done after much effort and the entire money is lying with the learned Official Liquidator and if the delay is condoned, then it will be possible for the learned Official Liquidator to disburse the amount which is already lying with him. Considering this

aspect of the matter and also the fact that there is no objection on the part of the secured creditors as well as EPFO and learned Official Liquidator

for the purposes of condonation of delay in making the payment of the 3rd and 4th installments by the auction purchaser pursuant to order dated

21.11.2014, this Court hereby allows I.A. No.9797 of 2019 and the delay in making payment of 3rd and 4th instalments by the auction purchaser is

hereby condoned and the sale conducted by this Court vide order dated 21.11.2014 is hereby confirmed in favour of the auction purchaser. The I.A.

No.9797 of 2019 is allowed to the aforesaid extent.

13. I.A. No.3745 of 2015 also stands disposed of.

14. The counsel for the learned Official Liquidator as well as counsel appearing on behalf of the SBI and BSFC jointly agree that a meeting of

lawyers/representatives of SBI and BSFC will take place on 27.01.2020 at 12.00 noon so that the claim filed by SBI and BSFC be considered as per

law.

15. Post this case on 31.01.2020.