(2014) 04 MAD CK 0074

In the Madras High Court

Case No : O.S.A. Nos. 84, 85 and 86 of 2014

M/s. Moorthy and Associates APPELLANT

Vs

The Official Liquidator High Court, Madras RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Citation : (2014) 04 MAD CK 0074

Hon'ble Judges : M. Venugopal, J;M. Jaichandren, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned counsels appearing for the parties concerned. The Original Side Appeals, in O.S.A. Nos. 84, 85 and 86 of 2014, have been filed against the common order, dated 19.3.2014, made in C.A. Nos. 321, 322 and 324 of 2014, in C.P. No. 115 of 2004.

2. It has been stated that, on 10.1.2010, the Official Liquidator had been appointed, in respect of M/s. Vijayakumar Mills Limited, which had been wound up, provisionally, in C.P. No. 115 of 2004. On 8.6.2013, the Official Liquidator had issued an advertisement in the newspapers, with regard to the sale of five Lots of properties, namely, Lots A, B, C, D and E. Pursuant to the advertisement made by the Official Liquidator, an auction had been conducted by the Company Court. The appellant had offered Rs. 13,00,00,000/- to purchase Lot A property, consisting of land, buildings, plant and machineries, situated at Chinnakalayamputhur post, Palani Taluk, Dindugal District. On 15.7.2013, the appellant had paid the amount of Rs. 1,20,67,400/-, as the Earnest Money Deposit, leaving the balance sale consideration of Rs. 11,79,32,600/-, payable by the appellant. The Company Court had directed the appellant to pay the balance amount, payable by the appellant, on or before 11.10.2013. As the appellant was not in a position to mobilize sufficient funds to pay the balance amount, within the time stipulated by the Company Court, it had filed an application, in C.A. No. 1116 of 2013, for extension of time to pay the balance payment. Having

accepted the payment of Rs. 2,80,00,000/-, by way of a demand draft, which had been handed over to the Official Liquidator, the Company Court had extended the time limit, for the payment of the balance amount, upto 25.11.2013.

3. It has been stated that, from 18.10.2013 to 11.11.2013, the appellant had taken five demand drafts of Rs. 50,00,000/- each, amounting to Rs. 2,50,00,000/- and they had been handed over to the Official Liquidator, as per the order passed by this Court, on 11.10.2013. On 24.10.2013, the appellant had made a request to the respondent to furnish the copies of the documents relating to Lot A property. However, the relevant documents had not been furnished to the appellant, till date. While so, when the case was listed before the Company Court, on 26.11.2013, the appellant had produced the demand draft for a sum of Rs. 25,00,000/-, which had been accepted by the Official Liquidator. The appellant had also filed an additional affidavit, in C.A. No. 1116 of 2013, for extension of time, for paying the balance amount, by eight weeks. On 26.11.2013, the Company Court had extended the time till 26.12.2013, for the payment of the balance amount and had also directed the appellant to pay interest at 12% per annum, for the balance amount. On 26.12.2013, the appellant had paid a sum of Rs. 50,00,000/-, which had been accepted by the Official Liquidator. A receipt for the said amount had also been issued. On 30.12.2013, the appellant had paid a sum of Rs. 50,00,000/-, which had been accepted by the Official Liquidator. As such, as on 30.12.2013, the appellant had paid a sum of Rs. 7,75,67,400/- to the Official Liquidator.

4. On 9.1.2014, when the case was listed for hearing before the Company Court, the appellant had produced eight demand drafts for a total sum of Rs. 1,50,00,000/- and it had also filed an additional affidavit seeking further time of six weeks to pay the balance amount. However, the Official Liquidator had refused to accept the said payment and he had stated that the earnest money deposit made by the appellant had already been forfeited, on 7.1.2014. Thereafter, the case had been listed on a few occasions and it had been adjourned for further hearings. While so, on 5.3.2014, the appellant had mobilized the funds for the entire balance sale consideration of Rs. 5,24,32,600/-. The appellant had filed four Company Applications, in C.A. Nos. 321 to 324 of 2014, in C.P. No. 115 of 2004. By the impugned order, dated 19.3.2014, the Company Applications, in C.A. Nos. 321 to 324 of 2014, had been dismissed. In such circumstances, the appellant had filed the present appeals against the common order, dated 19.3.2014, made in C.A. Nos. 321 to 324 of 2014.

5. Mr. P.S. Raman, the learned senior counsel, appearing for the appellant, had submitted that the appellant had taken all necessary steps, sincerely, to comply with the order passed by the Company Court, to pay the balance sale consideration, to the official liquidator, within the time limit stipulated by the said Court. However, due to various factors, which were beyond the control of the

appellant, the balance sale consideration, payable by the appellant, could not be paid.

6. The learned counsel appearing for the appellant had further submitted that a substantial portion of the sale consideration had been paid to the Official Liquidator to show the bona fide intention of the appellant. However, the learned single Judge, who had passed the impugned order, dated 19.3.2014, had refused to grant further time to the appellant to pay the balance sale consideration, in respect of the property in question.

7. The learned counsel appearing for the appellant had further submitted that there would be no loss caused to the Company under liquidation due to the acceptance of the request of the appellant for the grant of further time, for paying the balance sale consideration, in respect of Lot A property. On the other hand, the Company under liquidation would suffer a loss of a substantial amount, if the bid made by the second highest bidder is accepted. Further, the appellant is prepared to pay the interest, at 18% per annum, for the balance amount payable by the appellant, from 26.12.2013 to 10.4.2014.

8. Per contra, the learned counsel appearing on behalf of the Official Liquidator had submitted that sufficient time had been granted to the appellant, by the Company Court, to pay the balance sale consideration. However, the appellant had failed to do so. Therefore, the appellant is liable to forfeit the Earnest Money Deposit made by it. Even though the appellant had paid a substantial amount as part of the sale consideration, the balance amount of Rs. 5,24,32,600/-, payable by the appellant, had not been paid within the time limit stipulated by the Company Court. Therefore, the reliefs prayed for by the appellant cannot be granted, at this belated stage.

9. In view of the submissions made by the learned counsels appearing for the appellant, as well as the respondent, and on a perusal of the records available, this Court is of the considered view that the appellant, which was the highest bidder, in respect of Lot A property, had paid the Earnest Money Deposit and had also paid a substantial portion of the sale consideration. However, due to various unforeseen circumstances, the appellant had not been in a position to pay the balance sale consideration of Rs. 5,24,32,600/-, as per the order passed by the Company Court. Even though the Company Court had exercised its discretion in granting extension of time to the appellant, to pay the balance sale consideration of Rs. 5,24,32,600/-, the appellant had failed to do so. However, it has been submitted that the appellant is ready with the necessary demand drafts, for the payment of the balance sale consideration of Rs. 5,24,32,600/- and for the interest payable on the said sum, at 18% per annum, from 26.12.2013 to 10.4.2014.

10. On considering the rival submissions, we find it appropriate to condone the delay of 74 days caused by the appellant in paying the balance sale consideration and to set aside the forfeiture of the Earnest Money Deposit paid by the appellant.

11. We also find it appropriate to direct the Official Liquidator to accept the balance amount of Rs. 5,24,32,600/-, payable by the appellant, as the balance sale consideration, along with the interest at 18% per annum, from 26.12.2013 to 10.4.2013. This Court is convinced that no monetary loss would be caused to the Company under liquidation if the appellant is permitted to pay the balance sale consideration, to the Official Liquidator, along with the interest accrued thereon, as noted above. In such circumstances, O.S.A. No. 84 of 2014, is allowed setting aside the letter, dated 7.1.2014, issued by the Official Liquidator, regarding the forfeiture of the Earnest Money Deposit, in respect of Lot A. O.S.A. No. 85 of 2014, is allowed condoning the delay of 74 days in paying the balance sale consideration of Rs. 5,24,32,600/-, on condition that the appellant pays interest at 18% per annum, on Rs. 5,24,32,600/-, from 26.12.2013 to 10.4.2014. O.S.A. No. 86 of 2014, is allowed directing the Official Liquidator to execute the sale deed in favour of the appellant, as expeditiously as possible, as per the terms and conditions of the tender notice, dated 8.6.2013. The appellant is also directed to pay a sum of Rs. 25,000/- (Rupees twenty five thousand only) towards costs to the Official Liquidator, who shall credit it to the account of M/s. Vijayakumar Mills Limited. Connected Miscellaneous Petitions Nos. 1, 1 and 1 of 2014 are closed.