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(2016) 08 P&H CK 0343

In the Punjab And Haryana At Chandigarh

Case No : CA No.145 of 2016 in CA No. 330 of 2015 in CA No.426 of 2014 in CP No.13 of 2007.

M/s Ratna Commercial Enterprises Ltd. - Applicant @HASH M/s Vasutech Limited (in Provisional Liquidation)

Date of Decision : 22-08-2016

Acts Referred:
Companies Act, 1956 — Section 454

Citation : (2016) 4 PLR 692

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : Mr. Anand Chhibbar, Senior Advocate with Mr. Gaurav Mankotia, Advocate, for the Applicant; Mr. Deepankur Sharma, Advocate with Mr. D.K. Singh, Official Liquidator, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J. (Oral)—This application is filed under Rule 6 and 9 of the Companies (Court) Rules, 1959 (for short, ''the Rules'') read with Section 151 of Code of Civil Procedure, 1908 for setting aside the letter dated 7.9.2015 by which amount of Rs. 62,50,000/- deposited with the official liquidator has been forfeited by him.

2. The facts as mentioned in this application are that on 22.4.2009, Company Petition No.13 of 2007 was admitted against M/s Vasu Tech Limited (for short, ''the Company) and on 14.10.2011 official liquidator attached to this Court was appointed as provisional liquidator and was directed to take over the immovable and movable assets of the Company. The Court directed the provisional liquidator to initiate proceedings under Section 454 of the Companies Act, 1956. Thereafter, notice was published in the newspaper inviting sealed offers for purchase of the land, building, plant and machineries of the Company (in provisional liquidation) on "as is where is basis and whatever there is basis". The last date for submission of the bid was 2.6.2014 and the date for opening the tenders was fixed as 3.6.2014. There were 13 bidders in the said bid regarding lot No.II i.e. regarding plant and machinery of the Company. The Official

Liquidator was directed to give intimation to all the bidders to participate in the bid of Lots No.1 and II. On 16.2.2015, counsel appearing for the company and bidders, i.e. for both the lots No.I and II were present in Court and after inter-se bidding, the highest bid of applicant-Naresh Kumar was accepted to the tune of Rs. 6.25 crores for Lot No.I and II, a draft of Rs. 50 lacs was handed over by his counsel to the Official Liquidator in Court and the highest bidder was directed to deposit, balance amount of Rs. 12,50,000/- to make it 10% of earnest money of the offer made, with the official liquidator, within a period of ten days. On 7.4.2015, the sale in favour of the applicant was confirmed being the highest bidder and was granted six weeks'' time to pay the balance sale consideration. The applicant deposited Rs. 12.5 lacs within ten days with the Official Liquidator being 25% of the final bid. The remaining amount was ordered to be deposited vide order dated 7.4.2015 within six weeks. Since the applicant could not deposit the balance amount in time, therefore, he moved an application bearing CA No.330 of 2015 in CA No.426 of 2014 for extension of time and also prayed for ''No Objection Certificate'' from the Official Liquidator which was required by the Bank from which the applicant had to raise loan. On 29.5.2015, this Court accepted prayer of the applicant and granted time till 31.7.2015. The said order passed by this Court is reproduced as under:-

"Prayer in the present application is for extension of time for depositing the balance sale consideration of the total bid amount as ordered by this Court vide order dated 7.4.2015.

Notice of this application to Official Liquidator and Mr. Manish Jain, Advocate.

Mr. M. Jayakumar, Official Liquidator and Mr. Manish Jain, Advocate, accepts notice.

It has been submitted that vide order dated 7.4.2015, this Court had confirmed the sale in favour of the auction purchaser and granted six weeks time to the applicant to pay the balance sale consideration. However, the applicant stated to have complied the order qua depositing a sum of Rs. 12,50,000/- within ten days and the balance sale consideration could not be deposited as he had applied for a loan with Syndicate Bank, Chakkarpur Branch, Gurgaon, for depositing the balance sale consideration with the Official Liquidator.

Official Liquidator submits that vide letter dated 14.5.2015, an intimation was sent to the highest bidder-applicant to deposit the balance bid amount of Rs. 5,62,50,000/- within the stipulated time.

Learned Senior counsel for the applicant submits that bank is insisting for issuing ''No Objection Certificate'' before disbursing loan. Learned Senior counsel submits that the proper application seeking ''NOC'' from the Official Liquidator will be moved on Monday and on receipt of ''NOC'', the loan amount will be released by the bank and the balance sale consideration shall be deposited with the Official Liquidator by 31.7.2015.

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In view of the above facts and circumstances, time for depositing the balance sale consideration of the total bid amount is extended by 31.7.2015. In case the applicant/ highest bidder fails to deposit the balance sale consideration within the aforesaid period, the amount already deposited shall stand forfeited.

Application stands disposed of."

3. It is pertinent to mention that two appeals bearing CAPP No.33 of 2015 and CAPP No.30 of 2015 were filed by the erstwhile promoters of the Company against order dated 7.4.2015 by which sale was confirmed and other orders dated 23.4.2014, 01.12.2014, 27.01.2015, 16.02.2015 and 17.03.2015 against sale, respectively. Both the appeals were listed together on 15.7.2015 in which notice was issued.

4. On 27.7.2015, following order was passed by the Appellate Court:

"On request, adjourned to 02.9.2015. Any acts done hereinafter pursuant to the impugned orders including payment made shall be subject to further orders in the appeal."

5. The applicant also filed CAPP No.46 of 2015 to challenge the order dated 29.5.2015 by which per-emptory order was passed by this Court to the effect that in case the applicant failed to deposit the balance sale consideration by 31.7.2015, the amount already deposited shall stand forfeited.

6. In CAPP Nos. 30 and 33 of 2015, the Appellate Court passed the orders on 5.1.2016 which reads as under:-

"Adjourned to 07.01.2016.

Mr. Chhibbar, learned senior counsel states that he would take instructions from his client as to whether he is willing to make a minimum bid of Rs. 6.25 crores in the event of a fresh auction being ordered.

Mr. Chopra, learned senior counsel appearing on behalf of the appellant shall also take instructions as to how the appellant would safeguard the interest of the company by ensuring that an amount of not less than Rs. 6.25 crores plus 10% will be received by the company in a fresh auction. A photocopy of the order be placed in the connected files."

7. The CAPP No.46 of 2015 filed by the applicant was disposed of on 7.1.2016 with the following order:-

"Mr. Chhibbar, learned senior counsel appearing on behalf of the appellant states that the appellant is not interested in going ahead with the sale.

2. This statement has in fact also been recorded in a separate order passed today by us disposing of CAPPs-30 and 33-2015. Those appeals have been disposed of in view of the said statement.

3. This appeal was filed as during the pendency of the other appeals the official

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liquidator by a letter dated 07.09.2015 forfeited the earnest money deposit of Rs. 62.50 lacs made by the appellant. The appellant must in the first instance challenge this order of the official liquidator before the learned Company Judge.

4. The appeal is accordingly disposed of."

8. Pursuant to the aforesaid order dated 7.1.2016, the present application has been filed in which prayer has been made to challenge letter dated 7.9.2015 of the Official Liquidator which reads as follows:-

"I am directed to refer to your letter dated Nil received in this office on 13.08.2015 on the subject cited above wherein you have stated that you have requested this office to provide the copy of NOC regarding to the extent that there is no other lien or charge on the land and also that the land in question is a industrial land and change of land use has been obtained from concerned department and again requested this office to provide the copy of NOC.

In this regard, this is to inform you that this office had issued letter dated 14.07.2015 (copy enclosed) to you on the address furnish by you during the time of tender proceedings for purchase of assets/ properties of the company (In Liquidation) wherein it was mentioned that this office is unable to accept your request as the same is against the terms and conditions of the instant sale but the said letter has been returned back to this office with remarks "Incomplete address".

As you are aware that the Hon''ble High Court of Punjab and Haryana at Chandigarh vide order dated 29.05.2015 passed in CA No.330 of 2015 pleased to allow "time for depositing the balance sale consideration of the total bid amount is extended by 31.07.2015. In case the applicant/ highest bidder fails to deposit the balance sale consideration within the aforesaid period, the amount already deposited shall stand forfeited. In compliance of the aforesaid order, you have not deposited the balance amount of Rs. 5,62,50,000/- in due time.

In view of the above, Rs. 62.50 Lacs have been forfeited in terms of order dated 29.05.2015 passed in C.A. No.330 of 2015."

9. Counsel for the applicant has argued that the promoters of the Company had challenged the order dated 7.4.2015 vide CAPP No.33 of 2015 and orders dated 23.4.2014, 1.12.2014, 27.1.2015, 16.2.2015 and 17.3.2015 passed in CA No.886 of 2014 in/and CA No.426 of 2014 in CP No.209 of 2013 vide CAPP No.30 of 2015. He has also submitted that while the aforesaid appeals were pending, the applicant had approached the Official Liquidator, vide letter dated 25.8.2015 with a demand draft dated 6.8.2015 amounting to Rs. 3.40 crores, asking for two-three months'' time for depositing the balance amount. It is also submitted by him that though the sale was confirmed in favour of the applicant for an amount of Rs. 6.25 crores but the said amount was increased by the Appellate Court on 5.1.2016 but that amount was kept as a minimum bid for the purpose of further auction in case it has to happen. It is further submitted that the prayer

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made by the applicant to the Official Liquidator for extension of two-three months'' time has been turned down vide letter/order dated 7.9.2015 (impugned) on the ground that it has no jurisdiction to extend the time beyond 31.7.2015. It is further contended that the Appellate Court had, however, allowed the applicant to challenge the order of the official liquidator i.e. 7.9.2015 before this Court and hence, the present application has been filed.

10. Counsel for the respondent, however, submits that the order of extension of time dated 29.5.2015 was a conditional order and the non-applicant/ Official Liquidator could not have travelled beyond that order for the purpose of extending the time, prayed for, by the applicant vide his application when he deposited Rs. 3.40 crores. It is thus submitted that there is no fault on the part of the Official Liquidator and the order passed by this Court cannot be reviewed.

11. I have heard learned counsel for the parties and perused the available record with their able assistance. The issue involved in this case is as to whether the per-emptory order passed by this Court on 29.5.2015 can be recalled by this Court in the present application?

12. The facts are not much in dispute. The sale was confirmed in favour of the applicant on 7.4.2015 in an open auction in which the applicant had given the highest bid in Court. He was aware what he was doing at the time when he participated in the bid. He knowingly gave the highest bid and at that time, draft of Rs. 50 lacs was with him which was handed over to the Official Liquidator towards part payment of the earnest money. At that time, the applicant was not aware of, as to what should be the amount at which the bid would last and time was granted to him to deposit the remaining Rs. 12.5 lacs to complete 10% of the earnest money within a period of ten days. The applicant has deposited the said amount within time. He could not deposit the remaining amount which was to be deposited by him within a period of six weeks. Accordingly, he filed an application for extension of time for depositing the balance sale consideration of the total bid amount. The Court was kind enough to grant him time at that time for depositing the balance sale consideration of Rs. 5,62,50,000/- and afforded him almost 63 days i.e. counted from 29.5.2015 to 31.7.2015 and specifically passed the order that "In case the applicant/ highest bidder fails to deposit the balance sale consideration within the aforesaid period, the amount already deposited shall stand forfeited." This was a per-emptory order passed by this Court in the presence of the applicant. The applicant, if had any difficulty, should have filed another application before the Company Court for the purpose of further extension of time but he approached the Official Liquidator with the part of the balance sale consideration and asked him for extension of two to three months'' time for the purpose for making the deficiency of sale consideration good. Obviously, Official Liquidator has no jurisdiction under any provision of law for extending the time for the deposit of the sale consideration as the power vests with the Company Court. The Official Liquidator, thus, passed the impugned order on 7.9.2015 expressing his inability to accept the request of the applicant

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on the ground that there is a categoric direction by the Company Court for the purpose of deposit of the balance sale consideration and also imposed the sanction that in case the amount is not deposited within the stipulated time, the earnest money deposited by the applicant shall stand forfeited by the Official Liquidator.

13. The applicant run a very high risk when he took time deliberately of three months'' for depositing the amount. He should have been vigilant enough at that time. The appeals filed by the promoters has nothing to do with the act to be performed by the applicant, who is altogether a different person and had to arrange his own money for the purpose of purchasing Lot No.I and II of the properties of the Company which was sold by the Court in an inter-se bidding by the intending buyers. Thus, the order passed by the Official Liquidator does not suffer from any error at all and he has followed the order dated 29.5.2015 passed by this Court. Accordingly, I do not find any reason to interfere in the impugned orders. The present application is hereby dismissed.

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