

**(1992) 07 MAD CK 0024**

**In the Madras High Court**

**Case No : O.S.A. No's. 75 and 76 of 1985**

N. Babu Janardhanam

APPELLANT

Vs

Golden Films (P.) Ltd. and another

RESPONDENT

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**Date of Decision :** 29-07-1992

**Acts Referred:**

Companies Act, 1956 — Section 456, 457, 457(3), 460, 460(6)

**Citation :** (1992) 2 LW 674 : (1993) 1 MLJ 10

**Hon'ble Judges :** Padmini Jesudurai, J; Misra, J

**Bench :** Division Bench

**Advocate :** P. Seshadri, for the Appellant; G. Viswanathan and N. Veeramani, for the Respondent

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## **Judgement**

Mishra, J.—These two appeals arise out of a proceeding in Company Petition No. 30 of 1963. Since our judgment in O.S.A. No. 76 of

1985 is going to give to the appellant in O.S.A. No. 75 of 1985 an opportunity to have a say at the stage of confirmation of sale of the property in

question we propose to deal with only the order in Application No. 768 of 1984 in Company Petition No. 30 of 1963.

2. Most of the facts are admitted on all sides and they only need a narration. Briefly stated, however, the facts are that by an order in Company

Petition No. 30 of 1963, the Golden Films Pvt. Ltd. (hereinafter referred to as ""the company"" ) was directed to be wound up and the official

liquidator was appointed as the liquidator thereof. A sister concern of the Golden Films Private Limited by name Golden Studios Private Limited

was also ordered to be bound up in Company Petition No. 8 of 1972. By an order dated December 23, 1976, a learned single judge of this court

directed sale of 23 acres and 66 cents of land belonging to the company to Mrs.

B. Sakunthala, the appellant, for a consideration of Rs. 22 lakhs

payable in six equal monthly instalments. She, however, paid no instalments and thus, the question of sale came up for consideration again. Some

persons gave their offers of amounts higher than Rs. 22 lakhs but the learned company judge decided to order for the sale in favour of the Central

Warehousing Corporation (hereinafter referred to as ""the Corporation""), for a sum of Rs. 20 lakhs only. The learned judge, it seems, had reasons

for doing so although the amount offered by the Corporation was less than the amount offered by others.

3. The order, however, in this behalf stipulated that the Corporation shall pay a sum of Rs. 5 lakhs within one week from the date of the order, viz.,

December 17, 1976, and the balance within a week after taking Delivery of possession. It appears, however, that the Corporation paid a sum of

Rs. 5 lakhs within one week of the order but delivery of possession of the entire extent of land sold was not effected on one date but on several

dates and the balance of amount of Rs. 15 lakhs of the purchase money of Rs. 20 lakhs was also not paid in one lump sum as ordered but in

different instalments. So much so even though the entire property was handed over to the Corporation it kept some money with it and deposited it

later on applications in the proceedings before the learned company judge.

4. The appellant aforementioned, however, raised several objections and filed a petition saying that she intended to purchase the property and

objected to the sale in favour of the Corporation. The learned Company judge, however, who has disposed of the petition (No. 768 of 1984),

noted as follows :

The present applicant would now seek to set aside the sale deed pursuant to the order made on December 17, 1976, on the ground that the

purchaser was shown certain concessions by the official liquidator himself in the former making the payments, that the official liquidator had

arbitrarily delivered possession of the property at various stages, that there was felling down of trees by the official liquidator without the

permission of the court and that virtually from and out of the income of the property, the first respondent-purchaser had made the payments

subsequently. It is emphasised by Mr. V. Suresham, learned counsel for the applicant that the total payment came to be made more than two years

after the date of the order directing the sale. Learned counsel also brought to my notice the decision of the Supreme Court in Navalkha and Sons

Vs. Ramanuja Das and Others, , and also the decision in Amba Tannin and Pharmaceuticals Ltd. Vs. Official Liquidator, High Court, Bombay and

Others, . He would submit that the sale is yet to be confirmed by" this court and, therefore, this court has the competence to interfere and pass

such necessary orders as would promote the interest of the members of the company as also its creditors. There is no gainsaying that the

application is laid eight years after the said order and also that the price of immovable property has shot up beyond imagination. But for the

escalation in price, I am quite certain that the present application would not have been before this court.

In view of the order made by Suryamurthy J., I am unable to entertain the argument that the sale made to the first respondent is subject to

confirmation of court. I had already referred to the text of the order, in particular the direction that the official liquidator shall execute a sale deed in

favour of the Central Warehousing Corporation. There is also specific direction directing the official liquidator to sell 23 acres and 66 cents of land,

building, etc., belonging to the company to the Central Warehousing Corporation for a sum of Rs. 20,00,000. Thus the court itself had directed the

sale and also directed the official liquidator to execute the sale deed. In the teeth of such directions, it is impossible to countenance the argument

that the sale is subject to confirmation by the court. On the other hand, there had been a sale by this court itself except that the official liquidator

was called upon to execute a sate deed to accept the purchase price and to effect delivery of the property to the purchaser-first respondent.

It the parties were really aggrieved against the said order made by the learned judge, their remedy is to have preferred an appeal. That was not

done. The order has, therefore, become final and sitting in the company court, I shall respect it. Above all, it is relevant to notice that an attempt to

review the said order was negatived by the same learned judge in C.A. No. 656 of 1976. Thus, it is patent that the order of the learned judge

dated December 17, 1976, had become final.

5. It has to be borne in mind, however, in dealing with a case of a company, that on a winding up order being made the property of the company

does not vest in the official liquidator as in the case of insolvency. The property of the company remains the property of the company and the

liquidator is only given custody of the property. Section 456 of the Companies Act, 1956, leaves no ambiguity in this behalf as it says :

(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as

the case may be, shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears

to be entitled.

and sub-section (2) thereof reads :

(2) All the property and effects of the company shall be deemed to be in the custody of the court as from the date of the order for the winding-up

of the company.

6. The liquidator thus appointed gets his power u/s 457 of the Act with the sanction of the court for the sale of the movable and immovable

property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or

body corporate, or to sell the same in parcels. But even this power has been subject to the right given to the creditors and contributories under

sub-section (3) thereof which reads as follows :

457. Powers of liquidator. - (3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject

to the control of the court; and any creditor or contributory may apply to the court with respect to the exercise or proposed exercise of any of the

powers conferred by this section.

7. The law stated in the various provisions of the Companies Act has given to the official liquidator ample freedom to deal with the assets of the

company under liquidation but the control of the court has been acknowledged at every place and besides, the court's power in this behalf, as

noticed above, under sub-section (6) of section 460 of the Act, wherein it is stated that :

(6) Any person aggrieved by any act or decision of the liquidator may apply to the court; and the court may confirm, reverse or modify the act or

decision complained of, and make such further order as it thinks just in the circumstances.

8. Certain rights of the creditors and the contributories such as the one in sub-section (1) of section 460 of the Act, which reads :

460. Exercise and control of liquidator's powers-(1) Subject to the provisions of this Act, the liquidator shall, in the administration of the assets of

the company and the distribution thereof among its creditors, have regard to any directions which may be given by resolution of the creditors or

contributories at any general meeting or by the committee of inspection.

are given.

9. It may thus be pertinent to say that the liquidator's custody of the company under liquidation is next to that of the court and for any act affecting

the properties of the company under liquidation he has to obtain the sanction of the court and if there is any act of the liquidator in this behalf not

acceptable to the creditors and contributories, they have been given the right to move the court for suitable directions and orders. If we see the

facts of the instant case in the light of the aforementioned legal provisions we have to notice that the order of the court directing the liquidator to sell

the property to the first respondent-Corporation only conforms to the rule that the liquidator on his own could not sell the property he had to do so

only with the sanction of the court. The order to sell which, in the instant case came in the hands of the liquidator, stipulated conditions that the

Corporation had to pay a sum of Rs. 5 lakhs within one week of the order and the remaining Rs. 15 lakhs of rupees on delivery of possession.

There is nothing on the record to show how the liquidator without any sanction of the court devised a mode of delivery of possession in parcels

and also received payments from the Corporation in instalments. These were some acts of the official liquidator affecting the properties which

undoubtedly gave to the creditors and the contributories occasion to come to the court to question the conduct of the liquidator and that of the

purchaser-Corporation and to object to the confirmation of the sale in favour of the Corporation.

10. What has really struck us most is the approach taken by the learned company judge that since the court ordered for sale in favour of the

Corporation, the sale became final and no confirmation of sale was required by the court thus in effect taking away altogether the right of the

creditors and contributories to complain to the court about the violation of the

order of sale by the Corporation and the liquidator. We have the Companies (Court) Rules, 1959, framed by the Supreme Court of India after consulting the High Courts, in exercise of the powers conferred by sub-sections (1) and (2) of section 643 of the Companies Act, in which rules with regard to sales by the official liquidators have been framed. Rule

272 says :

272. Sale to be subject to sanction and to confirmation by court. - Unless the court otherwise orders, no property belonging to company which is being wound-up by the court shall be sold by the official liquidator without the previous sanction of the court, and every sale shall be subject to confirmation by the court".

11. A mere glance at this rule is enough to convince us that the liquidator must have first the sanction of the court to sell the property and after such sanction alone he should sell the property. After sale there is a requirement of confirmation by the court because the sale by the liquidator with the previous consent of the court, unless confirmed, will not become final.

12. A Division Bench of the Gujarat High Court dealt with a case of sale of property of a company under liquidation as directed by the court in the case of Universal Dyestuff Industries Ltd., In re [1988] 63 Comp Cas 842. That was a case in which the learned company judge directed the liquidator to sell the property to the highest bidder. The court, however, declined to confirm the sale. One of the highest bidders appealed. The Bench hearing the appeal noticed the argument of learned counsel, similar to the one dealt with by the learned company judge in the instant case, in

these words (at page 844) :

Mr. Shah, learned counsel appearing for the appellant, mainly contended that the direction dated December 11, 1987, has specifically given

powers to the provisional liquidator to sell all the articles on an "as and where is" basis after inviting offers from the intending purchasers and

accepting the highest offer. Thus, from the order itself, it is clear that the court has impliedly given confirmation of the provisional liquidator

accepting the highest offer for the articles in question. Mr. Shah further submits that there is automatic confirmation of the offer of the highest

bidder. In support of his contention, Mr. Shah invited our attention to the decision in the case of Taj Clay Works Ltd. v. Official Liquidator [1960]

50 Comp Cas 432 (AP). This decision has followed the rulings in Brindaban Agarwala v. Official Liquidator, Saraswati Soap and Oil Mills Ltd.

[1952] 22 Comp Cas 75 (All) and S. Soundararajan and Others Vs. Khaka Mahomed Ismail Saheb of Messrs. Roshan and Co., . In this Andhra

Pradesh judgment, it has been specifically held in paragraph 8 as under (at page 435 of 30 Comp Cas) :

"The observations of the learned judges in that case are pertinent in the present context :

It is only right and proper that the sale should be subject to the confirmation of the court. The condition is a safeguard against irregularity or fraud

in connection with the sale and against property being sold at an inadequate price.

This principle has been strictly followed in the present case also. The observation and the principles enunciated in this decision and other decisions

referred to above clearly support the order passed by the learned judge".

13. Dealing further with the law on the subject in the above judgment, Universal Dyestuff Industries Ltd. In re [1988] 63 Comp Cas 842, it is said

that (at page 845) :

Section 457 of the Companies Act, 1956, deals with the powers of the liquidator. This section clearly enumerates the power of the liquidator in

winding up proceedings ordered by the court. Section 457(3) provides that "the exercise by the liquidator in a winding up by the court of the

powers conferred by this section shall be subject to the control of the court; and any creditor or contributory, may apply to the court with respect

to the exercise or proposed exercise of any of the powers conferred by this section". Thus, reading both the section and the rule, it is clear that the

control of the court for the purpose of deciding as to the genuineness of sale and confirming the same is paramount and it cannot be said that the

court has abdicated its power by simply asking the provisional liquidator to sell the property to the highest bidder. At the stage of confirmation, as

stated in the decision referred to above, the inadequacy of the price can be a relevant ground for the court to interfere in such sales and that in the

interest of the company, the court can make such direction for the purpose of getting an adequate price for the properties belonging to the

company in liquidation.

14. The case before a Bench of this court in S. Soundararajan and Others Vs. Khaka Mahomed Ismail Saheb of Messrs. Roshan and Co.,

referred to in the Gujarat judgment above, was one with respect to a court-sale under Order 21, rule 92 of the Civil Procedure Code. It is obvious

thus that the principles which apply with respect to the court sale under Order 21 and confirmation under rule 92 of the Civil Procedure Code, as

prescribed thereunder are applied with respect to the sale by a liquidator with the consent of the court or under the orders of the court. The Bench

of this court in S. Soundararajan and Others Vs. Khaka Mahomed Ismail Saheb of Messrs. Roshan and Co., "it is only right and proper that the

sale should be subject to the confirmation of the court. The condition is a safeguard against irregularity or fraud in connection with the sale and

against property being sold at an inadequate price".

15. We have exercised restraint and not entered into any controversy on the merits for, if we do so, we shall be really doing what the learned

company judge must do with respect to the sale which is yet to be confirmed. When we have observed that creditors and contributories can make

complaint and noticed certain irregularities alleged by them we have done so only for the purpose of showing how the appellant had locus standi to

appear to object to the confirmation of sale and we should not be understood to have held that what they allege is true and acceptable.

16. Since we have found that an error of law has been committed by the learned company judge in holding against the appellant that no

confirmation was required because the sale had been ordered by the court, we are inclined to interfere with the impugned order but propose to

remit the whole matter for a rehearing and disposal in accordance with law.

17. In the result, the appeals are allowed. The impugned order is set aside and the case is remitted to the learned company judge for a rehearing

and decision whether to confirm the sale or not. No costs. In view of the assistance that learned counsel for the liquidator has offered to the court,

we fix his hearing fee at Rs. 2,500.