
(2006) 05 RAJ CK 0010
In the Rajasthan High Court

Podar Mills Ltd.

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 456, 457, 460, 535

Citation : (2007) 137 CompCas 271 : (2007) 77 SCL 194

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—The applicant Podar Mills Ltd., moved this application along with judge's summons for seeking the orders of this court, inter alia, to the effect that the capitalised value of the land described in annexure 1 appended to the application be fixed and the official liquidator be directed to disclaim the said land u/s 535 of the Companies Act and the amount so fixed by this Court may be directed to be deposited by the applicant and further that the official liquidator be directed to transfer/assign the revisionary rights and other interests in the said land in favour of the applicant on the capitalised value so fixed by this court. The piece of land which is in possession of the applicant Podar Mills Ltd., belongs to the Jaipur Spinning and Weaving Mills Ltd., (the company in liquidation) which was ordered to be wound up by this Court vide order dated December 2, 1983. After the winding up order all the properties of the company in liquidation shall be deemed to be in the custody of the court as from the date of order of winding up of the company by virtue of the provisions of Section 456 of the Companies Act. It has been averred that a large chunk of land which was owned "By the company in liquidation was leased out to the applicant Podar Mills Ltd., vide registered lease deed December 30, 1964. The term of lease was 99 years against an yearly rent of Rs. 20,000. This lease deed was modified in another lease deed between the company in liquidation and the applicant Podar Mills Ltd. On August 23, 1968, increasing the area from 35,380 sq. yards to 56,629 sq. yards for 99 years and the rent was increased to Rs. 35,510 per year.

2. The official liquidator moved an Application No. 21 of 1988 in Company Petition No. 10 of 1980 under Sections 456, 457, 460 read with Section 456(2) of the Companies Act for seeking the permission from this hon''ble court to take possession of the premises and for a direction to the District Magistrate authorising them to take possession of the said land and deliver it to the official liquidator mainly on the ground that the applicant had not paid the yearly rents with effect from April 1, 1986. After the aforesaid application came to be filed, the State Bank of India, which is a secured creditor, filed an application that in a suit filed by it in the Bombay High Court against the applicant Podar Mills Ltd. The Bombay High Court has appointed a court receiver over the properties and thus the proceedings initiated by the official liquidator deserve to be dismissed in the absence of the leave obtained from the Bombay High Court. This Court vide order dated July 5, 1991, allowed the official liquidator to implead the court receiver as party in the aforesaid application after obtaining leave from the Bombay High Court. The official liquidator through advocate filed application in the Bombay High Court and the same remained undecided and in the meantime the recovery suit came to be transferred to the Debts Recovery Tribunal-I, Mumbai. The Debts Recovery Tribunal vide order dated November 22, 2001, discharged the court receiver with a direction to hand over the possession to the applicant. The applicant in these circumstances filed this application for fixing the capitalised value of the land in question by this Court so that the same can be transferred in its favour. The official liquidator filed a reply to the application and raised an objection to the effect that the applicant is not entitled to retain the said land or transfer of the same inasmuch as the same will be against the interests of the creditors and contributories. The official liquidator averred that he has to recover money from the assets of the company in liquidation and after the sale of these assets the money will be disbursed to the creditors and contributories. The official liquidator averred that in case the applicant is prepared to purchase the property of the current market value of the land as may be fixed by this court, he is not having objection subject however to the approval of this court.

3. The applicant filed a rejoinder to the reply submitted by the official liquidator.

4. The applicant Podar Mills after reserving the orders on the application filed written submissions and submitted that the SBI and the official liquidator got the valuation of the property in question to be about Rs. 4 crores apparently based on the valuation report dated October 29, 2004, of J. K. Murty and Co., Mumbai, again wherein the estimated market value of the plot has been alleged to be Rs. 390.63 lakhs. In the submissions made by applicant Podar Mills, it was submitted that with a view to save time and cost of unnecessary litigation, they are prepared to pay the sum of Rs. 390.63 lakhs being the amount in the valuation report dated October 29, 2004, given by J. K. Murty and Co., Mumbai (the valuer appointed by SBI) plus interest on the amount from the date of valuation till date at such rate as may be deemed fair and reasonable by this hon''ble court.

5. After submission of the written submission and the offer tendered by the application Podar Mills, this Court again listed the matter on May 19, 2006, and the matter was fixed for further submissions of the parties on May 26, 2006, on the offer submitted by the applicant Podar Mills.

6. Having heard the submissions advanced before me, I am of the view that the applicant being the lessee, has no preferential right to purchase the property. In all fairness the property is required to be sold in an open auction and the applicant may take part in auction proceedings. The State Bank of India is directed to redetermine the market value of the property and thereafter the official liquidator shall initiate auction proceedings.

7. The application stands disposed of as indicated above.