
(2004) 06 CAL CK 0066
In the Calcutta High Court
Case No : C.A. No. 455 of 2001

Pradip Kumar Dasgupta

APPELLANT

Vs

Official Liquidator, High Court and Others

RESPONDENT

Date of Decision : 28-06-2004

Acts Referred:

Citation : (2004) 4 CHN 185 : (2005) 124 CompCas 168 : 108 CWN 916 : (2005) 58 SCL 194

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : P.K. Roy, D. Basak and Asis Mukherjee, in C.A. No. 532 of 2003 and S.N. Mukherjee, in C.A. No. 86 of 2004 and A.K. Dhandhanian, for the Appellant; B.K. Bachawat, Mukti Chandra Ghosh, Bidyut Dutt and Mithua Sen, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—Since all the applications involve identical questions of fact and law those are disposed of by this common judgment.

2. The Golden Biscuit Company Pvt. Ltd. in liquidation (hereinafter referred to as the "said company") was wound up by this Court by an order dated March 10, 1999. The Official Liquidator was directed to take possession of the assets of the company forthwith.

3. During the pendency of the winding up proceeding the West Bengal Financial Corporation (hereinafter referred to as "WBFC") took notional possession of the plant and machinery of the company in liquidation on October 16, 1998. The formal possession was taken on December 8, 1998.

4. WBFC made an application inter alia asking for leave to sale the assets of the company in liquidation as well as restraining official liquidator from taking possession of the assets of the company in liquidation.

5. By an order dated October 4, 1999 Mr. Ronojit Kumar Mitra, J. (as His Lordship then was) granted liberty to WBFC to sell the plant and machinery and other

assets charged in their favour with a corresponding direction to the extent that in every step of sale Official Liquidator must be notified. The sale was made subject to confirmation of this Court.

6. By an order dated March 3, 2000 the order of winding up was recalled on the basis of a terms of settlement arrived at by and between the management of the company in liquidation and the petitioning creditor. There was settlement with WBFC. The assets were repossessed by the company in liquidation on March 22, 2000.

7. The order of winding up was again revived on June 12, 2001 in view of default committed by the company. The WBFC again took possession of the assets and properties on August 16, 2001. There had been further attempt to revive the said company. There had been further payment to WBFC in terms of the settlement arrived at. However, such attempt failed. Pursuant to the earlier direction of Ronojit Kumar Mitra, J. (as His Lordship then was) passed on October 4, 1999 WBFC conducted the sale and the sale was completed in favour of ANMOL Snax Limited (hereinafter referred to as "ANMOL") subject to confirmation by this Court. Such sale price was however below the valuation done by the WBFC. The assets were valued by WBFC at Rs. 44.6 lacs. According to WBFC the Official Liquidator was time to time informed about such sale.

8. By an order dated September 2, 2003 this Court confirmed the sale in favour of ANMOL at a sum of Rs. 37.5 lacs.

9. In the earlier order dated October 4, 1999 WBFC undertook to pay the workmen in accordance with law. Hence, by the said order dated September 2, 2003 the Official Liquidator was granted liberty to invite claims and settle the dues of the creditors. The Official Liquidator was directed to send the particulars of the workers' claim to the WBFC for making payment.

10. After entire payment was made by the purchaser the WBFC handed over possession on October 1, 2003 to the successful purchaser. Since October 1, 2003 the purchaser ANMOL had been in possession of the assets. According to them after taking possession they invested a sum of Rs. 21.25 lacs for purchase of new machineries as well as for making the plant ready for operation.

11. In this backdrop altogether 5 applications were heard by me. Principal issues involved in the said 5 applications are as follows :

(1) C.A.No. 455 of 2001 : This application was made by one Pradip Kumar Dasgupta claiming to be a contributory of the company in liquidation. He prayed for recall of the order dated June 12, 2001 by which this Court directed Official Liquidator to take possession of the assets in view of default committed by the company in liquidation.

(2) C.A.No. 512 of 2001 : This is an application made by the said Pradip Kumar Dasgupta inter alia praying for direction upon WBFC to hand over possession of the assets of the company in liquidation to the company as well as for liberty to

commence business and production.

(3) C.A.No. 366 of 2003 : This is an application made by WBFC for confirmation of sale in favour of ANMOL for a sum of Rs. 37.5 lac.

(4) C.A.No. 532 of 2003 : This application was made by the said Mr. Pradip Kumar Dasgupta for recall of the order dated September 2, 2003 whereby the sale was confirmed in favour of ANMOL as well as for setting aside the sale in favour of ANMOL.

(6) C.A.No. 86 of 2004: This application was made by M/s Doshi Agents Pvt. Ltd. claiming to be a secured creditor for setting aside the sale in favour of ANMOL.

12. As discussed above the first three applications were virtually disposed of as would appear from the chronological events recorded hereinbefore. Hence, those three applications being C.A.No. 455 of 2001, C.A.No. 512 of 2001 and C.A.No. 366 of 2001 are disposed of without passing any further order on the same.

13. This leaves us with the two applications made by Mr. Pradip Kumar Dasgupta as well as M/s Doshi Agents Pvt. Ltd. inter alia praying for setting aside of the sale confirmed in favour of ANMOL.

14. Mr. P.K. Roy, Learned Senior Counsel, appearing in support of the first application being C.A.No. 532 of 2003 contended as follows :

(i) The sale conducted by WBFC was contrary to the direction of this Court as contained in order dated October 4, 1999 inasmuch as Official Liquidator was not informed at any stage.

(ii) The property was sold at a price much below the valuation done by WBFC.

(iii) WBFC at one point of time agreed to have the entire claim settled at Rs. 41.00 lac out of which a sum of Rs. 8.00 lac had already been paid leaving a balance sum of Rs. 33.00 lac. Hence, the sale should be set aside with liberty to the petitioner to pay the said sum of Rs. 33.00 lacs in full and final settlement of the claim of WBFC.

(iv) An opportunity should be given to the petitioner having 1/3 rd shareholding of the company in liquidation as also having support of other shareholders to revive the company.

(v) Although the sale was conducted for the landed property measuring about 0.68 acre the entire land had been given possession of measuring more than 0.68 acres.

15. Mr. S.N. Mukherjee, learned senior counsel appearing for Doshi Agents Pvt. Ltd., being the applicant in the other application being C.A.No. 86 of 2004 contended as follows :

(i) Since the applicant was a secured creditor with the knowledge of WBFC the sale should be set aside as it could fetch appropriate price.

(ii) Further attempt should be made by sale afresh so that higher price could be achieved.

16. Mr. S.N. Mukherjee in support of his contention cited the following decisions :

(i) Allahabad Bank etc. etc. Vs. Bengal Paper Mills Co. Ltd. and Others,

(ii) Union Bank of India Vs. Official Liquidator H.C. of Calcutta and Others,

(iii) 2001, Vol-1, Calcutta Law Times, Page 450 (Usha Atlas and Hydraulic Equipment Ltd. (in liquidation) and Rajendra Kumar Jhawar v. Official Liquidator)

(iv) Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others,

17. Ms. Mithua Sen, learned counsel appearing for the Official Liquidator admitted that the Official Liquidator was informed at the appropriate stage by the WBFC. However, those letters referred to by WBFC were misplaced in the office of the Official Liquidator. In other words, she admitted the allegations of WBFC that the Official Liquidator was informed at the relevant point of time in terms of the order dated October 4, 1999.

18. Mr. B.K. Bachawat, learned senior counsel, while opposing the said two applications on behalf of ANMOL contended that the sale took place long before and the possession was taken over by ANMOL on October 1, 2003. Steps had already been taken for running the said factory and after spending huge amount the factory was made ready for operation. At this stage if the sale was set aside it would cause immense prejudice to the purchaser. Mr. Bachawat also contended that the sale had reached a finality and at this stage the same should not be set aside. Mr. Bachawat in support of his contention cited the decision of the Apex Court reported in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, .

19. It is well-settled principle of law that once the sale is conducted under the supervision of the Court and the same is confirmed by the Court the same should not be set aside except on cogent reasons otherwise there would be no sanctity to the Court orders. From the chronology of events it would appear that from time to time the company in liquidation was given opportunity by this Court to pay all the creditors including WBFC. The company could not adhere to their commitments made before this Court. It is true that at one point of time WBFC accepted Rs. 41.00 lacs in full and final settlement although their claim was much more than the said sum. Such acceptance was conditional upon payment of the said sum in stipulated manner. The company could not pay within the stipulated period. Hence, it would not be appropriate for me to compel WBFC to accept a sum of Rs. 33.00 lacs in full and final settlement of their claim at a much belated stage. WBFC being a public financial institution cannot be called upon to accept much lesser sum than that of their claim.

20. The matter can be viewed from another angle. The sale was conducted by WBFC. The matter was placed before this Court. Ultimately this Court by an

order dated September 2, 2003 confirmed the sale. The possession was handed over on October 1, 2003. This two applicants waited for a considerable period and came at a much belated stage for setting aside the sale. The first application was made on 24th November, 2003 whereas the second application was made in January, 2004. By this time the purchaser might have altered their position by spending further sums to put the factory in operation. The balance of convenience would not permit me to set aside the sale on the grounds as discussed hereinbefore.

21. On the application of Mr. Mukherjee, Mr. Bachawat made serious comments about the alleged transaction had between Mr. Mukherjee's client being Doshi Agents Pvt. Ltd. and the then company in liquidation. I am not going into that question at this stage. The same would be decided at the appropriate stage if occasion so arises.

22. May I now deal with the cases cited by the parties--

(i) Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, : Paragraph 22 of this judgment was relied on. In this paragraph the Apex Court considered the power of the Financial Institution granted u/s 29 of the State Financial Corporation Act. While doing so the Apex Court observed that every endeavour should be made, to make the unit viable and be put on working condition. If it becomes unworkable in such event sale should be conducted in the manner prescribed by the Apex Court in the said paragraph.

In the instant case from the sequence of events it would appear that opportunities were given to the company to pay all the dues of the financial institution. However, all attempts failed and ultimately the property was sold.

(ii) Allahabad Bank etc. etc. Vs. Bengal Paper Mills Co. Ltd. and Others, : Paragraphs 13 and 16 of this judgment were relied upon. While setting aside the sale the Apex Court observed that the learned Single Judge did not consider whether the offer accepted by the Court was a fair and adequate price in view of the valuation done in that regard. The Apex Court also observed the learned Single Judge did not ascertain the claims of the secured and unsecured creditors and whether the price fetched was adequate to pay of those claims. The Apex Court lastly observed that it would be the obligation of the Court to ensure that best possible price had been procured whereby the creditors could recover their dues at least some part of it. In the instant case, I adjourned the hearing of the matter to enable the parties to find out any suitable higher offer. The petitioning creditor contended that he was prepared to purchase the property for a sum of Rs. 50.00 lacs provided he was given an adjustment of a sum of Rs. 12.00 lacs being his claim in the winding up proceeding, The petitioning creditor was an unsecured creditor. Even if I accept his offer it would amount to a net amount of Rs. 38.00 lacs to be paid to WBFC being the secured creditor whereas the sale price fetched was Rs. 37.5 lacs. It is further noted that the purchaser in deference to the desire of this Court already matched the valuation by making

payment of further sum of Rs. 7.5 lacs. The petitioning creditor did not come forward to outbid the purchaser. The applicants also could not bring any suitable offer so that I could consider the issue of setting aside the sale by directing further sale to be held.

(iii) Union Bank of India Vs. Official Liquidator H.C. of Calcutta and Others, : Paragraphs 13 and 17 were relied upon. Here also the Apex Court observed that without disclosing the valuation report to the creditors and without fixing the reserve price the property should not have been auctioned.

(iv) 2001, Vol-I, Calcutta Law Times, Page 450 (Usha Atlas and Hydraulic Equipment Ltd. (in liquidation) and Rajendra Kumar Jhavar v. Official Liquidator) : Paragraph 11 of this Division Bench judgment was relied upon. Here also Division Bench of this Court observed that the sale should not have been confirmed at a much lower price when the claims of the creditors were much above than the price fetched therefor.

(v) Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, : In this decision the Apex Court considered the issue of recovery of the dues by the Financial Corporation. The Apex Court observed that if repayment are not received as per the scheduled time frame it would disturb the equilibrium of the financial corporation as they did not have at their disposal unlimited funds. The Apex Court also observed that in a case of a proceeding u/s 29 of the State Financial Corporation Act the scope of judicial review is confined to two circumstances i.e. (a) whether there is any statutory violation or (b) whether the financial corporation acts unfairly and unreasonably.

23. From the aforesaid decisions the following principles of law evolve :

(i) In case possession of an undertaking is taken by the financial institution. They should make all endeavour to make the unit viable. Ultimately if it becomes unworkable sale should be conducted to recover the dues.

(ii) In case of Court-sale, Court would make all endeavour to see that a fair and reasonable price is fetched.

(iii) The price fetched must commensurate with the valuation done in that regard.

(iv) The Court is also to see whether the price fetched could take care of the dues of the creditors as far as possible.

24. Apex Court as well as the High Court consistently observed that once a sale had reached its finality, the same should be preserved to maintain the sanctity of the Court orders. I do not find any cogent reason for which I can upset a sale confirmed by another learned Judge and the purchaser had altered their position by making payment of balance purchase price as well as by spending additional amounts to put the factory in operation.

25. This leaves up with the solitary question of valuation. It appears that the valuation was made for Rs. 44.60 lacs whereas the property had been sold at Rs.

37.5 lacs. Admittedly this purchase price would hardly cover the claim of the WBFC as also the workers leaving aside the other ordinary creditors. I am told Allahabad Bank is also a secured creditor.

26. Although the sale had reached finality and I do not find any reason to set aside the sale I indicated to Mr. Bachawat that my conscience is pricking on the issue of valuation. In deference to the desire of this Court Mr. Bachawat's client ANMOL deposited a further sum of Rs. 7.5 lacs in course of hearing with the Official Liquidator to match the valuation. The sale proceeds as of date stand to Rs. 45.00 lacs paid by ANMOL.

27. In the result the applications being C. A. No. 532 of 2003 and C. A. No. 86 of 2004 fail and are hereby dismissed.

28. There would be however, no order as to costs.

29. Since dispute was raised with regard to the measurement, Official Liquidator is directed to cause a local inspection along with the valuer as well as the representative of WBFC in presence of the authorised representative of the purchaser and in case it is found that any extra land had been taken possession of, Official Liquidator is directed to submit a report in that regard before this Court. Such exercise must be completed within four (4) weeks from date.

30. Urgent xerox certified copy would be given to the parties, if applied for.