

(2007) 03 KAR CK 0062

In the Karnataka High Court

Case No : Original Side Appeal No's. 53, 54 and 55 of 2006

Prestige Garden Estates Pvt. Ltd.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Companies Act, 1956 — Section 391, 394, 446

Citation : (2007) 139 CompCas 372 : (2007) 4 KarLJ 412

Hon'ble Judges : R. Gururajan, J;Anand Byrareddy, J

Bench : Division Bench

Advocate : Navkesh Batra, for Nandi Law, Chambers, for the Appellant; Udaya Holla, General for Respondent No. 1, Deepak, Official Liquidator for Respondent No. 2, Varadaraj R. Havaladar, for Respondent No. 3, King and Patridge for Respondent No. 4, H.R. Renuka, for Respondent Nos. 5 and 6 and K. Krishna, in Original Side Appeal No. 53/2006, Udaya Holla, General for Respondent No. 1, Deepak, Official Liquidator for Respondent No. 2, Varadaraj R. Havaladar and King and Patridge for Respondent No. 4 in Original Side Appeal No. 54/2006 and Deepak, Official Liquidator for Respondent No. 1, Varadaraj R. Havaladar and King and Patridge, in Original Side Appeal No. 55/2006, for the Respondent

Judgement

1. These appeals are admitted, heard and disposed of together, for the sake of convenience and expedition.

2. The facts leading up to these appeals may be briefly summarised as follows:

NGEF Limited (in liquidation) (NGEF) was a joint venture company of the State Government of Karnataka and M/s E.H.G. Electro Holding GmbH, Germany, (EHG) with the State Government holding 90.28% of the shares of the company and the balance 9.72% of the shares held by E.H.G.

NGEF suffered huge losses and became a sick industrial undertaking and was referred to the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, in the year 1994. The BIFR explored the possibility of rehabilitation and revival of the

company and ultimately, by an order dated 2-8-2002, opined that NGEF is not likely to make its net worth exceed its accumulated losses within any reasonable time and held that it is just and equitable and in public interest to be wound up and recommended accordingly to the High Court of Karnataka. The opinion which was received by the High Court on 24-8-2002 was registered as Company Petition 154/2002. The Company Court accepted the recommendation of the BIFR and NGEF was ordered to be wound up by the Court's order dated 3-8-2004.

By a further order dated 28-10-2005 the Company Court approved the draft terms and conditions of the proposed sale of the assets of NGEF by the invitation of sealed tenders and accordingly permitted the Official Liquidator to take further steps in terms thereof.

On 3-11-2005 the Official Liquidator published a public sale notice, inviting sealed tenders in respect of the sale of assets of NGEF.

On 28-11-2005 the State Government filed the two applications in CA No. 1052 & 1053/2005 seeking stay of the sale notice and the sale proceedings apart from seeking sanction for sale of land as a prelude to preparing a revival plan, respectively. The Court did not choose to pass interim orders, immediately.

The Official Liquidator proceeded with the opening of the bids on 1-12-2005 and placed the details of the bids in terms of a report dated 12-12-2005 before the Court. The Company Court by an order dated 14-12-2005 passed on the said report of the Official Liquidator, numbered as OLR 729/2005, held that any decision in respect of confirmation of the sale of the properties will be only after disposal of the applications filed by M/s Bangalore Metro Rail Corporation Limited, Karnataka State Road Transport Corporation and Bangalore Metropolitan Transport Corporation (who have requested for permission to purchase portions of NGEF land) (hereinafter referred to as "the BMRCL", "the KSRTC and "the BMTCL" for brevity) and that of the State Government. By a further order passed on 14-12-2005 as regards the applications filed by the State Government in CA No. 1052 & 1053/2005, observed that the State Government in order to satisfy the Court that it had conceived a scheme to revive NGEF and hence the proposed sale of assets of the Company ought to be kept in abeyance, granted further time till 22-12-2005 to enable the State Government to place appropriate material before the Court.

On 22-12-2005 the State Government, was heard on the applications in CA 1052 & 1053/2005 and the Court accepted the contention on behalf of the State Government notwithstanding the State's earlier stance before the BIFR, that the State Government was in a position to place sufficient material to satisfy the Court that the State was capable of reviving the company. Since the consideration of such material would involve considerable time, the Court felt that it would be unfair to retain the deposits of intending purchasers, indefinitely, and hence held that the sale proceedings be cancelled and terminated and

directed the Official Liquidator to refund all amounts in deposit, together with interest, to the respective bidders.

The appellant herein challenged the above order dated 22-12-2005 by way of an appeal in O.S.A.NO. 5/2006. On 28-2-2006 however, the same was withdrawn with liberty to make appropriate applications before the Company Judge in Company Applications 1052 & 1053/2005 to implead itself as a party, for recalling the order dated 22-12-2005 and for confirmation of the sale in its favour.

It is in this background that the appellant had filed several applications. Company Applications 173, 175, 176, 177 & 178/2006 were filed by the appellant seeking to implead itself as a necessary party in Company Applications in Company Petition No. 154/2002 (Namely, (a) CA No. 1052/2005 by the State of Karnataka seeking stay of a sale notice dated 14-11-2005, issued by the Official Liquidator; (b) CA No. 1053/2005 by the State of Karnataka seeking sanction of sale of land and stay of the sale proceedings to be conducted pursuant to the sale notice dated 14-11-2005; (c) CA No. 1095/2005 by BMTC, (d) CA No. 1096/2005 by Karnataka State Road Transport Corporation; & (e) CA No. 1097/2005 by BMRCL, respectively). On these applications seeking to implead itself as a party, the Company Judge has held that the appellant herein has failed to establish a legal right to an opportunity of hearing as it was not a proper and necessary party. This common order is the subject matter of O.S.A.NO. 53/2006.

The applications in CA No. 172 & CA No. 174/2005 were filed by the appellant in Company Applications CA No. 1052/2005 & CA No. 1053/2005 with a prayer to recall the order dated 22-12-2005 of the Company Court, cancelling the auction notification. Company application in CA No. 171/2006 was filed seeking confirmation of sale pursuant to its bid at the auction sale dated 1-12-2005. The Company Judge has summarily rejected the same holding that since the applications seeking to implead itself were rejected, these other applications would not warrant consideration. Those orders are the subject of matter of appeals in O.S.A.No. 54 and O.S.A.No. 55/2006, respectively.

3. The counsel for the appellant and the counsel for the respondents are heard at length.

4. At the outset the counsel for the parties were unanimously agreed that if on any ground this Court were inclined to remit the matter for a fresh consideration of any of the reliefs sought for by the appellant in its several applications, which were the subject matter of appeals, that there is no objection if this Bench were to consider any such relief on its merits in these appeals itself. The Advocate General on behalf of the State Government particularly submitted that the tenability of the prayer of the appellant for confirmation of sale in its favour is actually the only relief to be considered on merits.

5. Notwithstanding this consensus, the scope of Section 4 of the Karnataka High Courts Act, 1961, under which this intra-Court appeal is filed, is kept in view and

having regard to the facts and circumstances and for the sake of expedition all the reliefs" sought for by the appellant in the original applications before the Company Judge are addressed and considered on merits.

6. The counsel for the appellant contends as under:

The Company Judge having permitted the official liquidator to carry on with the sale proceedings, notwithstanding the applications of the State Government seeking stay of the said proceedings, the appellant had entered into the exercise of making a bid at Rs. 1599.66 Crore and had deposited a sum of Rs. 186 Crore, as earnest money. And while not disputing the power of the Company Court not to confirm the sale, would submit that the "Court not assigning reasons" would not mean the absence of reasons. The question would be whether that power of the Court has been judiciously exercised.

7. The only reason for cancelling the sale notification and proceedings was on account of a possible revival plan of the State Government. In the absence of any material before the Court as on 22-12-2005 there was no basis for the Court to have passed the said order.

8. Further that in the absence of any arrangement having been agreed to by the several creditors and the Contributory, the exercise of the discretionary power of the Court under Rule 9 of the Companies (Court) Rules, 1959 was in violation of a statutory requirement in having brought the sale process to a halt and in staying the winding up proceedings, as it were.

9. That there were no supervening circumstances from the date the State Government filed its applications seeking stay of sale proceedings as on 25-11-2005 and the date of order dated 22-12-2005. In fact the Court had postponed the consideration of the applications to enable the State Government to place material before it to satisfy it that there was a viable revival plan.

10. It is submitted by the counsel that even as on date a so-called scheme that has been formulated only evinces keen interest in the real estate of the Company.

11. It is further contended that it is only by an application in Company Application 1447/2006 in Company Petition No. 154/2002 dated 21-11-2006 that the State Government has sought leave of the Company Court u/s 446 of the Companies Act, 1959, to file and prosecute a scheme of revival before the Central Government under Sections 391 and 394 of the Act. And consequently has sought for stay of winding up proceedings under Company Application No. 1448/2006 dated 21-11-2006. It is also pointed out that the said application for stay was opposed by the other share holder and contributory in the company, namely, EGH Electro Holding, to the effect that the winding up of a company which is commercially insolvent cannot be the subject matter of stay u/s 466 of the Act. Such a measure can be contemplated only in the case of a company which has been able to recover from its insolvency and not in respect of a company which is in a state of irreparable insolvency.

12. It is contended that the appellant was identified as the highest bidder, notwithstanding the objection sought to be raised by another, namely, M/s Melmount Constructions Pvt. Limited to the effect it's bid is the highest as a single lot bidder at Rs. 1,327 Crore and in any event it should be given an opportunity to bid for some of the lots individually to better its bid. The Official Liquidator did not find that the appellant was disqualified in any manner. The report of the opening of bids having been placed before the Court for it to either accept or reject the bids and to confirm the sale or otherwise. And the Court proceeding to postpone such consideration pending the hearing of applications by several entities such as BMRCL, KSRTC & BMTC, who were neither creditors, share holders nor contributories and to further postpone the same at the behest of the State which had not come forth with a scheme as required by the Statute and to ultimately cancel the sale notification & terminate the sale proceedings for no fault of the appellant, or on account of any infirmity in the sale proceedings, has resulted in a serious irregularity.

13. And further the appellant's applications seeking a hearing, on such a reversal, being summarily rejected on the footing that the appellant had no vested right, as its bid was not formally accepted is clearly unjust and illegal. The absence of a contractual right did not preclude the appellant from being heard on the propriety of termination of the sale proceedings, especially in the circumstances of the present case. The fact that the bidders were specifically informed of the applications filed by the State Government in CA No. 1052 & CA 1053 is significant and presupposes that the Court intended, to take the bidders into confidence of the State's intentions which were as yet nascent. The denial of hearing, at a later point of time, is hence unjust and inexplicable.

14. The counsel for the appellant places reliance on a large number of authorities in support of his contentions.

15. The counsel for the appellant concludes that the Company Judge had committed an irregularity in cancelling the sale notification and terminating the sale proceedings at the behest of the State Government and without affording any opportunity of hearing to the appellant. And that the exercise of inherent power without the statutory requirements being complied with in bringing to a halt the winding up proceedings was illegal and without basis. And that there was no valid reason for not accepting the bid of the appellant and to confirm the sale in its favour. And would hence pray that the appeals be allowed and the reliefs claimed be granted.

16. Per contra the learned Advocate General appearing on behalf of the State Government contends as follows:

That the appellant's bid not having been accepted the appellant is not in a position to claim any enforceable right and would therefore would have no say in the proceedings before the Company Court.

That the Company in liquidation being a Government Company, power to

compromise or make arrangements is required to be submitted to the Central Government in terms of a notification in this regard.

The State Government being a majority share holder holding 90.28% of the paid up equity capital and out of the total liabilities of Rs. 431 Crore the State being a creditor to the tune of Rs. 311 Crore or 72%, is genuinely concerned and earnestly endeavouring to implement a revival package.

There being no restriction imposed in the winding-up order and as a major financial share holder has had positive negotiations with the consortium of Banks who are secured creditors and who are not averse to a revival plan. There was hence no impediment to bring to a halt the sale proceedings in the larger public interest. The revival and rehabilitation is in public interest and no mala fides can be attributed to the State Government.

That the revival package envisages sale of land identified for public purposes and in this regard an area of 53.91% acres is earmarked to be sold in favour of BMRCL, KSRTC and BMTC for the construction of the proposed satellite bus terminus of KSRTC, Depot for Bangalore Metro Rail, Depot and Bus stand for BMTC. The transport infrastructure proposed to be constructed on these lands are in the best public interest. It is submitted that by the sale of 53.91 acres at the market value prescribed by the Government, to the above public utility organizations an amount of about Rs. 107 Crore could be realized which would be adequate to settle the claim of all creditors and other claimants.

17. The learned Advocate General would call upon the Court to take judicial notice of the steep escalation in prices of land in Bangalore over the last one year. This circumstance by itself would be enough to hold that even if the appellant was the highest bidder which required to be accepted - it would result in gifting the land to the appellant at less than current market value. This would be contrary to public interest. The sale proceedings of December 2005 are no longer relevant and hence the appellant's claims are an exercise in futility. The bid of the appellant cannot be accepted even de-hors the revival plan of the State Government at this point of time.

18. Reliance is placed by the learned Advocate General on several authorities in support of his contentions.

19. The learned Advocate General would therefore submit that there are no reliefs capable of being granted to the appellant and that the appeals be dismissed.

20. The counsel for Respondent. No. 3, State Bank of Mysore, one of the banks comprising the consortium of Banks (namely, State Bank of India, Vijaya Bank, Canara Bank, State Bank of Patiala, State Bank of Travancore, State Bank of Hyderabad and State Bank of Saurashtra) financing NGEF Limited would submit that the consortium of Banks had independently initiated proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 for the

recovery of Rs. 75.46 crore with interest thereof against NGEF Limited. The recovery application having been allowed, a Recovery Certificate dated 19.2.2007 has been issued to the Official Liquidator to pay Rs. 89.61 crore with further interest. It is contended that though there was a tentative offer of settlement by the State Government during the pendency of Company Applications 1052 and 1053/2005, the offer has outlived itself and no payment is forthcoming. The revival scheme does not evoke confidence with the said respondent. In this background the said respondent seeks appropriate orders to protect its interests.

21. In the above facts and circumstances and the tenor of the orders impugned, the following questions arise for our consideration.

- a) Whether the Company Judge was justified in cancelling the sale notification and terminating the sale proceedings by the order dated 22.12.2005?
- b) Whether the said order can be recalled and set aside at the instance of the appellant? Does the appellant have the locus standi to challenge the same?
- c) Whether the bid of the appellant is to be accepted and the sale of assets of the company in liquidation, to be confirmed?
- d) What order?

22. In considering the first question herein above it is to be noted that the Company Application 1052/2005 by the State Government was filed u/s 466(1) of the Companies Act, 1956 seeking the following prayer;

...to stay the sale notice issued by the Official Liquidator, pending the submission of revival and rehabilitation plan for NGEF Limited (in liquidation)....

And Company Application 1053/2005 was filed u/s 457(1)(c) of the Companies Act, 1956 read with Rules 6 and 9 of the Companies (Court) Rules, 1959 seeking the following reliefs:

- a) ...to sanction sale of 53.913 acres of NGEF land at the latest market value prescribed by the Government required for BMRCL, KSRTC and BMTC for a public purpose pending submission of the scheme for revival and rehabilitation of NGEF to this Court.... (Para 15 of the application)
- b) ...Applicant be permitted to submit rehabilitation/revival plan only after paying the outstanding dues to the bankers and for which sale of 53.913 acres to BMRCL, BMTC and KSRTC would be absolutely necessary" (Para 16 of the application)
- c) ...to stay the sale proceedings to be conducted as per the sale notice terms and conditions issued by the Official Liquidator.... (Para 17 of the application)

23. The reasons assigned to support the reliefs prayed for in the two applications were identical, namely:

- a) After the winding-up order was passed by the High Court as on 3.8.2004 the

Government has decided to prepare a suitable proposal for NGEF's revival and rehabilitation.

b) Pursuant to the issuance of sale notice by the Official Liquidator, on 3.11.2005, the Government decided on 7.11.2005 that NGEF should be revived and its factory relocated at some other place and the existing NGEF lands should be put for better use.

c) BMRCL, KSRTC and BMTC had approached the Government, well before the issuance of the sale notice, for sale of 53.91 acres of the land to them. As it was required for development of various transport infrastructure facilities.

d) The consortium of banks have been requesting for settlement of their outstanding dues. A meeting was held with them on 11.11.2005 and a one time settlement was worked out and it was decided that the Government should pay the outstanding amount of Rs. 58.73 crore with 50% of the interest amount accrued and legal and instance charges.

e) BMRCL, a Government company formed for implementing Bangalore Metro Rail Project had brought to the attention of the Official Liquidator that in terms of a Government Notification dated 28.2.2004 development activities over certain lands stand frozen. This includes 213330 square metres of NGEF land slated for acquisition for the Metro Project.

f) Hence the proposed sale would create complications and delay implementation of infrastructural facilities, and cause loss and injury to the detriment of public interest.

24. Upon motion of these applications or on subsequent dates of hearing till the passing of the order dated 22.12.2005 the State Government had not placed any material in so far as the proposed revival plan was concerned. In fact it was proposed by the State Government and sanction was being sought under the applications for sale of land in favour of the public utility organizations above named, as a condition precedent for the submission of a revival plan.

25. In the face of this circumstance the correctness and legal sanction in the company judge proceeding to nip the sale proceedings, which was permitted by him in the first instance to proceed notwithstanding the above applications of the State Government and desperate motions on the same, requires to be addressed.

26. The reluctance of the Company Court, however, in passing the order is apparent in accepting that the "new dispensation" was venturing forth boldly and evincing keen interest in the matter of "revival" - the "laudable objects" being

a) optimum utilization of resources

b) economic growth

c) generation of employment" - given the caustic expressions employed by the Company Court on the earlier dates of hearing, as to the credibility of the State

Government's intentions.

And notwithstanding that this hinged on the state placing satisfactory material before the Court regarding the proposed revival scheme apart from commitments made to its creditor bankers, proceeded to cancel the auction notification for the sale of the assets of the company in liquidation and cancelled all proceedings thereto - apart from issuing other directions-

One of the conditions imposed was the production of the opinion of the Government to revive the company supported by the relevant material, on or before 16.3.2006.

In other words, the company judge was yet to be satisfied on the feasibility of a revival plan as there was no revival plan placed before him. The company judge was at best expressing confidence that a revival plan would be placed before him before 16.3.2006. It therefore follows that the sale proceedings which were not alleged to be irregular or otherwise invalid ought not to have been set at naught, but could properly have been kept in abeyance which in any event was the prayer of the applicant, State Government. Curiously, the other reliefs claimed in C.A. 1053/2006 were neither argued nor addressed either before the Company Court or before this Court. The cancellation and termination of the proceedings on the footing that keeping the deposits of the intending purchasers indefinitely, would be unfair was not so much on the complaint of the appellant or others but was possibly in order to avoid any loss to the bidders. Therefore in our opinion, the order of cancellation of the sale notification and termination of the proceedings under the order dated 22.12.2005 was out of place. Having regard to the expense and effort that was involved in even conducting the auction under the aegis of the Court. In our view it was more appropriate if the sale proceedings were kept in abeyance to meet the situation.

27. The learned Counsel for the appellant has placed reliance on a Judgment of the Andhra Pradesh High Court in Koteswara Raju Dantuluri v. Garvee Granites Limited and Ors. O.S.A. No. 14/2002 dated 15.4.2002, wherein the Court refused to grant stay after noticing the relevant facts in the said case. The present set of facts stand on a different footing when compared to the facts in the said Judgment. The said Judgment is of no assistance to the appellant.

28. On the next question whether the appellant has the locus standi to question the said order dated 22.12.2005. Having regard to the fact that third parties including the appellant were prompted to participate at a public sale notwithstanding the pending applications of the State Government - the pendency of which was specifically brought to the attention of all the bidders by the Official Liquidator at the auction. The summary termination of the sale proceedings and directing refund of the deposits of substantial sums of money on the conditional acceptance of a proposal of the State Government and without taking those intending purchasers into confidence of the possibility of the sale being kept in abeyance for a certain period, or indefinitely, is plainly arbitrary and

unjust. This is apparent from the fact that the appellant is willing to keep the deposit with the Official Liquidator pending consideration of the present appeals, till date. The Company Court having allowed the sale proceedings notwithstanding the application of the State Government was to hear every person who had a semblance of an interest pursuant to such sale. The power of the Court to accept or reject any bid without assigning any reason cannot be invoked to deny the right of hearing to a person whose bid was neither accepted or rejected. But one who was identified by the Official Liquidator as the highest bidder at a valid auction, and was not otherwise disqualified.

29. Of the several authorities cited by the learned Advocate General the following do support the propositions canvassed by him.

Rajasthan Housing Board v. G.S. Investments and Anr. (2007) 1 SCC 472;

NGEF Ltd v. Chandra Developers, (P) Ltd. (2005) SCC 219;

Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd., ;

There can be no quarrel over the propositions in terms of the Apex Court Judgments. What is required to be considered in this case however, is whether the Company Judge, in accepting the highest bid and confirming a sale in terms of the proceedings is in any manner fettered. The case law cited does not deal with this power, particularly in terms of the present circumstances. The exercise of power by the Company Court cannot be viewed with the degree of scrutiny in relation to executive action. A fair decision would require a fair opportunity being afforded to a party who is not a total stranger to the issue on hand.

The case of Chandra Developers (supra), involving the very company is a case in point wherein a bidder has agitated its claim right up to the Supreme Court. The highest bidder may not possess any contractual right nor be an absolutely necessary party but is certainly a proper party to be heard in arriving at a fair decision in Court auction proceedings. Hence, though the appellant was not vested with any contractual right that was enforceable, fair play required that he be taken into confidence by the Court in either keeping the sale in abeyance or setting the proceedings at naught. In our opinion therefore the appellant certainly required to be heard before the order dated 22.12.2005 was passed and the appellant being impleaded as a necessary party was a mere formality. The consideration of the applications of the appellant on the limited ground whether he had established any legally enforceable right was totally misplaced. As already mentioned the question was one of fair play. The appellant deserved to be made a party and had a right to be heard.

30. The next question as regards the acceptance of the bid of the appellant and confirmation of sale is concerned, the same would not merit consideration at this point of time on account of sheer efflux of time. There is not much dispute that the market price as on the dates that the bids were made and opened is no longer relevant to-day in terms of the price increase. But what cannot be

forgotten is that price is fixed by the Court after valuation by a State Government Agency (TECSOK) whether that price would stand the test of scrutiny, can only be decided after a decision on the material placed before the Court of exploring the possible consideration of a revival Scheme sought to be propounded by the State Government.

In any event the bids not having been accepted by the Company Court, it would always be open to call for fresh bids on the footing that there is a wide variance with the current market price, in comparison. This would be left to the Company Court which would possibly proceed on the basis of a fresh valuation, if a sale is contemplated in the future.

31. It further transpires that the State Government has filed Company Applications C.A. 1447/2006 and C.A. 1448/2006 dated 21.11.2006 seeking to "...file and prosecute the scheme of revival of NGEF Limited before the Central Government u/s 391 and Section 394 of the Companies Act, 1956..." and for a prayer "...to stay the winding up proceedings pending disposal of the petition filed by the applicant before the Central Government for sanction of the Scheme of revival of NGEF Limited...", respectively.

32. It is submitted at the bar that arguments have been addressed whether the scheme should be considered by the Company Judge himself or whether leave should be granted to prosecute the same before the Central Government and the said application is reserved for orders.

33. In the above back drop and on a close examination of the material on record and the vehement contentions on behalf of the State Government of the protection of public interest notwithstanding, primarily on account of the company in liquidation being a Government company does not have the effect of requiring different considerations being applied at the behest of a "new dispensation". A change in guard at the helm of affairs and "bold" thinking would not negate long drawn out proceedings before the BIFR, where there was scope for considering all alternatives including development of real estate of the company, to bring it out of the red. Nor can the inaction of a major shareholder for over two years after the matter was transferred to the Company Court with a recommendation for winding-up, be condoned. The further fact that the Court has chosen to pass a winding up order of a major Government company is not without circumspection and caution.

34. The scheme for revival is only now contemplated under the above referred applications C.A. 1447/2006 and C.A. 1448/2006.

35. Hence in our view the appeal in OSA No. 53/2006 deserves to be allowed, and is allowed. The appellant shall be made a party respondent to the proceedings.

36. In so far as the recalling of the order dated 22.12.2005 is concerned, the appeal in OSA No. 54/2006 is allowed in part. The order dated 22.12.2005 is

recalled the sale proceedings are temporarily kept in abeyance subject to the bid amounts of the bidders namely the appellant and M/s Melmount Constructions Private Limited, if it so desires to be considered in the reckoning, being continued to be kept in deposit.

37. In the above circumstances the appeal in OSA. No. 55/2006 does not warrant consideration at this point of time and is dismissed.

38. The material which the State Government was required to produce before the Company Court, in the first instance, of a revival plan is only now forth coming. As can be seen from the sequence of events the Company Court wanted to satisfy itself of a feasible revival plan. There is no indication of any such exercise till the filing of applications by the State Government in November 2006 in C.A. 1447 and 1448/2006. And in permitting the State Government to prosecute those applications without the Court being prima facie satisfied about the revival scheme and with the opinion at the outset of all concerned who are already before the Court, the net effect is one of the winding up proceedings being stalled till date. This is not to be. The winding up order was passed after a run-up of ten years, with the BIFR and the Company Court having applied their judicious mind, in that direction.

39. The Company Court is therefore requested to examine whether the proposed revival plan is in accordance with settled principles of revival and rehabilitation schemes of companies capable of emerging out of insolvency, before addressing the applications in C.A. 1447 and 1448/2006.

40. If the intention under the revival scheme appears only to secure 53 acres of land for the public utility organisations and for the State Government to deal with the remaining real estate, the Company Court which is armed with the necessary discretion to protect public interest and mould the terms and conditions of the sale to address all interests involved including the appellant and others who have ventured to participate at a legitimate Court sale, to formulate appropriate measures to ensure satisfaction of the discharge of all liabilities and protect public interest, as well. This need not necessarily entail handing over the assets of the company to the State Government as an alternative to winding up.

41. Accordingly the Company Court may itself examine the proposed revival scheme or obtain the assistance of the respondent creditors and contributor and such others, to weigh its pros and cons and thereafter proceed to consider the applications in C.A. No. 1447 and 1448/2006, if it is so warranted.

42. The Company Court shall resume the winding up proceedings in the event the revival scheme should be held unviable.