

(2006) 07 MP CK 0093
In the Madhya Pradesh High Court

Raj Enterprises

APPELLANT

Vs

Sul India Limited

RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 457, 483

Citation : (2008) 2 MPJR 217 : (2006) 3 MPJR 296

Hon'ble Judges : A.K. Patnaik, C.J;N.K. Mody, J

Bench : Division Bench

Judgement

This is an appeal u/s 483 of the Companies Act, 1956 against the order of the learned Single Judge dated 13.2.2004 in Company Petition No. 3/2001.

The facts briefly are that M/s. Sul India Ltd. (hereinafter referred to as "the company in liquidation") was ordered to be wound up by the learned Company Judge pursuant to the opinion of Board for Industrial and Financial Restriction. The Official Liquidator thereafter took custody of the assets of the company in liquidation and with the sanction of the learned Company Judge, published a notice inviting tenders for sale of land, building, plant, machinery and fixtures of the company in liquidation. In response to the said notice, the appellant and others submitted tenders and, ultimately, the bid of the appellant was accepted and the sale of the aforesaid property was confirmed in favour of the appellant. The appellant also deposited the entire sale price of Rs. 2,66,00,000/- with the Official Liquidator and possession of the said properties were also given to the appellant by the Official Liquidator. The appellant then filed an application LA. No. 4263/03 before the learned Company Judge praying that sale-deed in respect of the aforesaid properties belonging to the company in liquidation be executed in favour of M/s. Ruchi Soya Industries Ltd., but by the impugned order dated 13.2.2004, the learned Company Judge dismissed the said application.

Mr. Satish Bagadia, learned Counsel for the appellant submitted that learned Single Judge has taken a view in the impugned order that since there was no condition in the notice inviting tenders and other tender papers that the

successful tenderer will have the right to have the sale deed executed in favour of its nominee, the appellant at this stage had no right to ask for deviation from the terms and conditions. He submitted that neither the notice of sale nor the terms and conditions of the tender, copies of which have been filed before the Court provide that the sale deed would be executed only in favour of successful tenderer and not in favour of his nominee. He further submitted that the second reason given by the learned Company Judge for not allowing the sale deed to be executed in favour of the nominee of the appellant is that, had the sale deed been executed in favour of the appellant on payment of requisite stamp, the appellant would have executed another sale deed in favour of his nominee on payment of requisite stamp but if the sale deed is executed in favour of the nominee of the appellant, the State will suffer loss of stamp duty and this cannot be permitted by the Court.

Mr. Bagadia submitted that, similar contentions were raised before the Bombay High Court in Rahimtulla Lowji Damani Vs. The Official Assignee of Bombay, , but a Division Bench of Bombay High Court has turned down the aforesaid contentions and has held that the Official Assignee is free to execute sale deed in favour of purchaser or his nominee. He also cited the decision of learned Single Judge of Bombay High Court, in Ganapati Manja Hegade Vs. Subraya Rayappa Shetti, , in which it has been held that there is nothing in Order 21 Rule 91 of the CPC which requires either that purchaser should make an application or the certificate should be granted to him and to nobody else and that Court can grant sale certificate to a assignee of auction purchaser. He finally submitted that as a matter of practice, the learned Company Judge of this Court has been permitting execution of sale deeds in favour of the nominee of the purchaser.

The Official Liquidator has chosen not to appear in this appeal although his name finds place in the cause-list for the day. Had he also appeared, he would have supported the order passed by learned Company Judge and would have relied on reasons given by the learned Company Judge. Hence, we would like to deal with the reasons given by the learned Company Judge in the impugned order.

The first reason given by the learned Company Judge in the impugned order for refusing to allow the sale deed to be executed in favour of the nominee of the purchaser is that, there was no clause in the tender condition inviting offers providing that the successful tenderer will have a right to ask for execution of the (22) sale deed in favour of his nominee. But we find that neither in the notice of sale nor in the terms and conditions for tender is there any stipulation that the sale deed in respect of properties will be executed only in favour of the purchaser and no one else. The appellant who was the highest bidder has also not indicated in his tender that the sale deed will be executed in favour of the appellant and no one else. The tender of the appellant without such stipulation was accepted by the Official Liquidator and the sale in favour of the appellant has also been confirmed by the learned Company Judge. The appellant has deposited the entire sale price with the Official Liquidator and possession of the properties has also

been delivered to the appellant by the Official Liquidator. In the absence of any stipulation in the terms and conditions in the sale notice, tender papers or in the offer of the appellant to the effect that sale deed would be executed only in favour of the appellant and not in favour of any other nominee of the appellant, the learned Company Judge could not have imposed a completely new stipulation after the confirmation of the sale that the sale deed can be executed only in favour of the appellant. As has been held by the Chief Justice Beaumont in *Rahimtulla Lowji Damani v. Official Assignee* (supra), the general proposition is that the purchaser is entitled to a proper conveyance in the name of himself or a nominee. We are of the considered opinion that unless the terms and conditions of sale or unless the Act and Rules under which the sale deed has been made specifically stipulated that the purchaser would be entitled to a conveyance only in his favour and not in favour of assignee of the purchaser, the purchaser can opt to have the sale deed executed in favour of his nominee.

We have already dealt with the terms and conditions of the tender as well as sale and we may now deal with the provisions of Companies Act, 1956 and the rules made relating to sale. Section 457(l)(c) of the Companies Act, 1956 provides that the liquidator in a winding up by the High Court, shall have power with the sanction of the Court to sell immovable and movable 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. Rules 272 and 273 of the Companies (Court) Rules, 1959 provide for sale of the properties of the company in liquidation by the Official Liquidator and are quoted hereinbelow:

Rule 272 : Sale to be subject to sanction and to confirmation by Court--

Unless the Court otherwise orders, no property belonging to a Company which is being wound up by the Court shall be sold by the Official Liquidator without the previous sanction of Court, and every sale shall be subject to confirmation by the Court.

Rule 273 : Procedure at sale--

Every sale shall be held by the Official Liquidator, or, if the Judge shall so direct, by an agent or an auctioneer approved by the Court, and subject to such terms and conditions, if any, as may be approved by the Court. All sales shall be made by public auction or by inviting sealed tenders or in such manner as the Judge may direct.

A reading of the aforesaid two rules would show that every sale shall be held by the Official Liquidator, or if the Judge so directs, by an agent or an auctioneer approved the Court, and subject to such terms and conditions, if any, as may be approved by the Court. There is nothing in the said rules which provides that the sale once made in favour of the purchaser, the sale deed is to be executed only in his favour and not in favour of his nominee, but since under Rule 273, the terms and conditions of sale may be approved by the Court, it was open for the

Court while approving the terms and conditions of sale, to insist that the sale deed would be executed only in favour of the purchaser who has made the successful bid and not in favour of his nominee. But as we have seen, neither the sale notice nor the terms and conditions of a tender stipulated anywhere that the sale deed would be executed in favour of purchaser only and not in favour of his nominee.

The second reason given by the learned Company Judge in the impugned order for refusing to permit execution of the sale deed in favour of the nominee of the purchaser is that, deviation if now made in favour of one tenderer who is the successful bidder would be behind the back of others because they did not know of the same and such other tenderers may raise the grievance and object to the Court proceedings that if they had been told earlier that such transfer is permissible after acceptance of tender, they too would have set up their nominee like the one set up by the successful bidder. As we have indicated above, there was no stipulation in the notice for sale or in the terms and conditions of the tender that the sale deed would be executed only in favour of the successful bidder and not in favour his nominee. That apart, as a matter of fact, no such tenderer who has submitted tender has come to the Court objecting to the execution of the sale deed in favour of his nominee. The purpose of vesting control on the Company Judge on sale of properties by the Official Liquidator u/s 457 of the Companies Act, 1956 as well as Rules 272 and 273 of the Company (Court) Rules, 1959 is to ensure that the best possible price of the properties is obtained for the Company in liquidation and once the Company Judge is satisfied that such best possible price has been obtained for the properties of the Company in liquidation and has confirmed the same, it is not necessary for the Company Judge to speculate thereafter the likely objections which another tenderer who had submitted a bid would take in case the sale deed is executed in favour of nominee of the successful bidder.

The third reason given by the learned Single Judge for refusing to permit execution of the sale deed in favour of the nominee of the appellant is that, the Court had sanctioned the bid in favour of the appellant and not in favour of the nominee. We have been told by Mr. Bagadia, that the appellant is proprietorship concern, of which Shri Pankaj Khandelwal is the proprietor and Shri Pankaj Khandelwal is also the Director of Ruchi Soya Industries Ltd. in whose favour the sale deed is proposed to be executed. The nominee in whose favour the sale deed ought to have been executed namely, M/s. Ruchi Soya Industries Ltd. is thus not completely unconnected with the purchaser. Once the successful bidder had deposited the entire bid money and sale in his favour has been confirmed by the learned Company Judge after the learned Company Judge was satisfied that the price offered by the purchaser was the best possible price for the properties of the Company in liquidation, it was open for the purchaser to come forward and say that the sale deed be executed in favour of the company of which he was the director. It is expected that the purchaser of the properties of the Company in liquidation would make his own arrangements as to how he will utilize the

properties of the Company in liquidation which he has purchased having paid the best possible price.

The last reason given by the learned Single Judge in the impugned order is that, the arrangement between the appellant and the nominee is with a view to avoid stamp duty and such arrangement should not be allowed by the Court. It has been held by the Chief Justice Beaumont in *Rahimtulla Lowji Damani v. Official Assignee, Bomahy* (supra), it would cause considerable hardship if purchasers from the Official Assignee are to be deprived in all cases, irrespective of any benefit which may accrue to the Official Assignee, of the advantages of not paying stamp duty twice. Once we hold that in the absence of any stipulation in the notice for sale, terms and conditions of the tender for sale and in the absence of any provisions in the Companies Act, 1956 and the Rules 272 and 273 prohibiting the execution of sale deed in favour of the nominee of the purchaser, the purchaser will have the option to have the sale deed executed in favour of his nominee, the fact that in the event of execution of the sale deed in favour of the nominee of the purchaser, there may be some loss of stamp duty, is no ground for the Court to refuse permission for execution of sale deed in favour of nominee of the purchaser.

For the aforesaid reasons, we set aside the impugned order dated 13.2.2004 passed in I. A. No. 4263/2003 and direct the Official Liquidator to execute the sale deed in favour of the nominee of the purchaser, namely M/s. Ruchi Soya Industries Ltd.