(2015) 11 KAR CK 0116

In the Karnataka High Court

Case No : C.A. No. 970/2015 in C.A. No. 425/2015 in Co. P. No. 160/2002

RBL Bank Ltd. APPELLANT

Vs

Official Liquidator of Nucor Wires Ltd. RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0116

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Deepak, Advocate, for the Appellant; K.S. Mahadevan, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—This is an application filed by the secured creditor seeking perusal of memorandum of auction sale proceedings dated 03.09.2015 and to pass necessary orders in respect of sale by considering valuation report available in sealed cover and for passing orders thereon.

2. I have heard the arguments of Sri Deepak, learned Advocate appearing for applicant and Sri Mahadevan K.S., learned Advocate appearing for Official Liquidator and Sri Chandrashekar, learned Advocate appearing for respondent-2.

3. Respondent - company came to be ordered to be wound up by this Court in Co.P. No. 160/2002 by order dated 03.01.2005. Pursuant to the same, being first charge holder, secured creditor has taken over assets both movable, land/lease hold rights and immovable property of company (in liquidation). Records would indicate that Official Liquidator had attempted to sell the properties in liquidation on three occasions without any success. Applicant herein who is secured creditor had filed application C.A. No. 425/2015 praying before this Court to appoint a Valuer for purposes of valuation of properties of company (in liquidation) and to permit the applicant (secured creditor) to sell properties in association with Official Liquidator attached to this Court. This Court by order dated 16.06.2015

had appointed M/s. H Jayasurya and Associates as Valuer and directed the Valuer to submit its report within four weeks. Accordingly, Valuation report was submitted by the approved Valuer in a sealed cover on 13.07.2015.

4. By virtue of this Court having permitted the applicant to sell properties of company (in liquidation) in association with Official Liquidator, sale notice together with a brief sale notice along with detailed terms and conditions of sale was got published in newspapers in ''Economic Times'' (English version), Karnataka Edition, ''Deccan Herald'' (English) and Vijaya Karnataka (Kannada), Karnataka Edition on 29.07.2015 and full text of the sale notice was duly published in the website of the Official Liquidator. Sale notice are at Annexures-C and D.

5. Prospective purchasers have inspected the properties on 26.08.2015 namely, 15 parties are said to have inspected the factory premises in the presence of Official Liquidator and secured creditor as per the minutes dated 26.08.2015 - Annexure-E recorded at the factory premises. Perusal of the same would indicate that persons who have inspected the assets of the company (in liquidation) which was brought to sale have affixed their signatures for having visited the factory premises and in token of having inspected the assets. Communication from the secured creditor i.e., applicant herein dated 21.08.2015 and 25.08.2015 - Annexures- F1 and F2 would indicate that other secured creditors namely, State Bank of Mysore and Canara Bank who were second charge holders had also been informed and they were requested by the applicant to depute their representative on the schedule date and time and to be a member of Auction Committee. Subsequently thereafter three tenders were received by Official Liquidator on 02.09.2015 which was the last date for submission of tenders as per the sale notice -Annexure-D.

6. One Mr. Srinath, Deputy Manager of State Bank of Mysore, Official Liquidator, Assistant Official Liquidator and two other officers of the Official Liquidator, as also applicant herein as member of the sale committee were present when bids came to be opened by said committee in the Office of the Official Liquidator on 03.09.2015 @ 11.30 a.m. As can be seen from the memorandum of auction sale, three bids have been received and highest bid offered was by M/s. Chuan Shun Electric Company India Private Limited for Rs. 8,00,00,000/-. The bids offered by three tenderers are as under:

An opportunity to have inter se bid was provided by the sale committee in terms of the sale notice and bidders were permitted to improve upon their offer. Highest bidder M/s. Chuan Shun Electric Company India Private Limited increased its bid to Rs. 8,25,00,000/- voluntarily and two(2) other bidders backed out. Same is recorded in the minutes recorded by Sale Committee which is at Annexure-E. Hence, present application has been filed by the secured creditor for perusal of the sale proceedings dated 03.09.2015 by this Court and for passing necessary orders thereon.

7. It can be seen that three earlier attempts made by the Official Liquidator to sell properties had failed. Valuation report which is in sealed cover had been perused by this Court on 30.10.2015 after opening sealed cover and without indicating or informing the learned Advocates and parties present before Court the contents thereof. At that juncture, representative of the successful bidder namely, Sri Sanjay Thapalia who was present before Court offered to increase the bid by offering additional sum of Rs. 75 lakhs to the amount already indicated in the minutes. In other words, bid was increased from Rs. 8,25,00,000/- to Rs. 9,00,00,000/-. It was also undisputedly agreed by the said representative of successful bidder that said offer is in addition to the admitted dues payable to KIADB which was to the tune of Rs. 4,00,00,000/-. Said offer came to be recorded in the order sheet. Thus, it was agreed to by the successful bidder to pay total consideration of Rs. 13,00,00,000/-. Placing his submission on record and also affidavit filed, this application was ordered to be listed on 06.11.2015.

8. In view of the fact that there were rival claims with regard to certain machinery/equipments in C.A. Nos. 1071/2015 and 929/2015, matter was being adjourned from time to time at the in intense of those applicants. Today, sealed cover has been opened after seal of the said cover being perused by the learned Advocates appearing for parties present before Court and after satisfying that said seal was intact. Perusal of the valuation report by this Court would indicate that value of the industrial land has been valued at Rs. 13,47,23,000/-. Building and Civil works have been valued at Rs. 1,83,00,000/- and machinery, equipments, finished stocks etc., have been valued at Rs. 5,00,000/-. Sum total of the values is Rs. 15,35,23,000/-. Said report would also indicate the fair market value assessed by the Valuer is at Rs. 15,35,23,000/- and conservative value of 90% of the fair market value has been assessed at Rs. 13,81,70,700/- and distress price (forced sale basis) (80% of fair market value) has been assessed at Rs. 12,28,18,400/- as per the valuation made by the approved Valuer. Said valuation report would also indicate that dues payable to KIADB is around Rs. 3.80 Crores.

9. Perusal of valuation report would indicate that machineries, equipments and stocks etc., is valued at Rs. 5,00,000/-, total dues payable to KIADB even according to learned Advocate appearing for KIADB is to the tune of Rs. 3,80,03,065/- as on 22.05.2015. Necessarily for the subsequent period i.e., from 26.05.2015 till date, interest would have further accrued. It is because of this precise reason, the highest bidder has also agreed and undertaken in the affidavit filed on 05.11.2015 to pay KIADB all the dues.

10. In view of the fact that earlier three attempts made by Official Liquidator were unsuccessful to sell assets of the company (in liquidation) and now secured creditor in association with Official Liquidator having been able to secure three bidders or tenderers through publication and from amongst them, highest bidder having offered bid for Rs. 9,00,00,000/- and also undertaking to repay the entire

dues to KIADB which is to the tune of approximately Rs. 4,00,00,000/-, thus total bid or offer would be Rs. 13,00,00,000/-. In view of the fact that approved Valuer having indicated Conservative value of Industrial land, buildings, plant and machineries and other assets being Rs. 13,81,70,700/- and distress price being valued at Rs. 12,28,18,400/-, this Court is of the considered view that bid offered by the successful bidder being in between these two values as indicated by the Valuer, offer or bid offered by the highest bidder deserves to be accepted.

11. Accordingly, it is hereby accepted. The bid offered by M/s. Chuan Shun Electric Company India Private Limited, No. 139/2 (5265/601), Anekal, Bengaluru Main Road, Jigani, Anekal Taluk, Bengaluru - 560 105 for Rs. 13,00,00,000/- (Rupees Thirteen Crores only) is hereby accepted. Successful bidder shall pay the balance amount excluding initial bid amount already paid within 30 days from the date of receipt of certified copy of this order as per the terms of sale notice before the Official Liquidator. Successful bidder shall deposit the bid amount as ordered herein above excluding initial deposit under two demand drafts namely, one demand draft drawn in favour of Official Liquidator for Rs. 9 Crores and second demand draft covering the dues of KIADB drawn in favour of KIADB. Amount due and payable to KIADB shall be indicated by KIADB to official liquidator as well as successful bidder forthwith as on 30.11.2015 and demand draft for the amount indicated by KIADB so deposited by the successful bidder before Official Liquidator shall be handed over to KIADB within seven days from such deposit. On receipt of demand draft, KIADB as agreed to in their statement of objections filed in the present application on 09.10.2015 shall transfer the lease hold rights in favour of successful bidder and thereafter successful bidders would be at liberty to purse the matter with KIADB and without reference to Official Liquidator. Accordingly, application stands allowed.

