(2021) 07 CAL CK 0039

In the Calcutta High Court

Case No : IA NO. CA/20/2020 In Company Petition No. 313 Of 2012

Re: Rubi Star Real Estate & Housing Development Ltd — APPELLANT

Vs

Reba Mandal And Ors — RESPONDENT

Date of Decision : 15-07-2021

Acts Referred:
Companies Act, 2013 — Section 434(1)(c)

Citation : (2021) 07 CAL CK 0039

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Rupak Ghosh, Arnab Dutt, Ayan Dutt, S. Biswas

Final Decision : Disposed Of

Judgement

The applicants are the intending purchasers in respect of Lot No.4 being a property situated at Rajarhat, North 24 Parganas. The said plot of land was

advertised by the Official Liquidator on 1st February, 2019 and by way of a sale notice dated 24th January, 2019 pursuant to an order passed by a

learned single Judge of this Court on 11th January, 2019 in relation to sale of the properties of the company (in liquidation).

Learned Counsel appearing for the applicants submits that despite several orders passed by the company Court and at least four advertisements

pertaining to Lot No.4 of the land in question, no person or entity has expressed any interest in purchasing the said Lot No.4.

Counsel places the order of winding up dated 17th June, 2013 and the sale notices published on several dates thereafter including on 24th March, 2017

and 25th April, 2017. Orders passed on 11th January, 2019 resulted in sale notices being published for the concerned plot again on 24th January, 2019.

A subsequent order dated 14th June, 2019 specifically records that Lot No.4 has no takers. Counsel places the offer letter to the Official Liquidator

dated 25th September, 2020 by which Rs.2.5 Crores was mentioned as the offer price and the applicants also expressed their willingness to deposit

20% of the entire consideration money to the Official Liquidator. Counsel submits that an amount of Rs.50 Lakh was thereafter paid by the applicants

which would be evident from a letter dated 15th September, 2020.

It is submitted that since no other person has shown any interest to purchase Lot No.4 or willingness to revive the company (in liquidation), the

applicants should be permitted to purchase Lot No. 4 of the property belonging to the company (in liquidation). Counsel places two decisions of the

Supreme Court in respect of the Courtâ??s jurisdiction to entertain matters of this nature.

The Official Liquidator is present.

Upon hearing Counsel appearing for the applicants, this Court is satisfied that there is no factual impediment in allowing the prayers of the applicants

for purchasing Lot No. 4 of the land in question. Rs.50 Lakh has admittedly been deposited by the applicants with the Official Liquidator as 20% of

the total consideration money in terms of the offer letter. It is also admitted that there is no other buyer for the said plot of land as would be evident by

the order dated 14th June, 2019. No other offers have since been received by the Official Liquidator. The only question which this Court has to

address is whether this Court retains jurisdiction over matters of this nature after Action Ispat and Power Private Limited Vs. Shyam Metalics and

Energy Limited: (2021) 2 SCC 641 and A. Navinchandra Steels Private Limited Vs. SREI Equipment Finance Limited and Others: 2021 SCC OnLine

SC 149.

In Action Ispat, the question before a 3-Judge Bench of the Supreme Court was whether the Courts continued to exercise jurisdiction in winding up

proceedings after applications for transfer of such proceedings to the National Company Law Tribunal(NCLT) were made by creditors of the

company (in liquidation). In Action Ispat, the winding up proceedings had been admitted by the High Court and then transferred to the NCLT for being

tried under the provisions of The Insolvency and Bankruptcy Code, 2016. Action Ispat took into account the amendment to Section 434(1)(c)-5th

proviso-of the Companies Act, 2013 under which a party to a winding up proceeding may file an application for transfer of such proceedings to the

NCLT. The Supreme Court summarized its views in paragraph 14 of the report (paragraph 20 in some other publications). In paragraph 14.4, the

Supreme Court held that in a post-admission stage of a winding up petition as well as after the appointment of a Company Liquidator for taking over

the assets of a company which is sought to be wound up, the Company Court retains discretion whether to transfer such matters to the NCLT. The

Supreme Court proceeded to hold that proceedings which are at a pre-admission stage would compulsorily be transferable to the NCLT for being

resolved under Insolvency and Bankruptcy Code, 2016. In the words of the Supreme Court, the happening of certain irreversible events would

warrant a Company Court staying its hands on a transfer application of a creditor. The decision however clarified that adjudication on this issue would

depend on the particular stage of the proceedings before the Court. A. Navinchandra Steels reiterated the view taken in Action Ispat but stressed on

the need to revive and to resuscitate a corporate debtor in the larger public interest.

The factual aspect of the present case can be distinguished from the facts which were before the Supreme Court in both Action Ispat and

Navinchandra Steels. Action Ispat was decided specifically in relation to an application for transfer of the winding up proceedings to the NCLT. There

is admittedly no such transfer application which is pending before this Court. There is also no proceeding pending in relation to the company (in

liquidation) before the NCLT. No person or entity has come forward for reviving the Company (in liquidation) (ref: Navinchandra Steels). This Court

is of the view that these factors sufficiently differentiate the present matter from the cited decisions.

It is also evident from the submissions made on behalf of the Official Liquidator that sufficient expenses have been incurred for publishing the four

advertisements of the sale notices in newspapers and for valuation of the property. This would amount to circumstances which cannot be reversed if

this Court were to abstain from proceeding with the matter.

There is thus no impediment in allowing the prayers in the application.

In view of the above, there shall be an order in terms of prayer (a). The sale of Lot No.4 (re-advertised as Lot No.1 on 12th January, 2021) should be awarded in favour of the applicants. The Official Liquidator is directed to provide sufficient assistance to the applicants in this regard.

CA/20/2020 is disposed of in terms of the above.