

(2018) 07 DEL CK 0386
In the Delhi High Court
Case No : CO.PET. 389 OF 2001

Reserve Bank Of India

APPELLANT

Vs

Crystal Credit Corpn. Ltd

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Companies Act, 1956 — Section 446, 536, 536(2)

Citation : (2018) 07 DEL CK 0386

Hon'ble Judges : JAYANT NATH, J

Bench : Single Bench

Final Decision : Allowed

Judgement

JAYANT NATH, J

CA No.1983/2013

1. This application is filed on behalf of Sh.Sunil Mehra to restrain the OL from interfering in the peaceful possession of the property measuring 6 Nali

of Khata No.9, situated at Village Chohanpata, Patti Chopra Ranibagh Tehsil and District Nainital.

2. It has been pleaded in the application that Smt.Nita Pant and Mr.Rajesh Kumar Aggarwal had jointly purchased this property in a court auction.Â

3. A complaint filed by one Sh.Pratap Singh Bhandari was allowedÂ by the District Consumer Redressal Forum, Nainital vide its judgment dated

12.11.1999. In the execution, the property is said to have been auctioned pursuant to the order of the learned Civil Judge (Senior Division), Nainital.

As per the auction report dated 19.07.2002, the highest bidder was Sh.Rajesh Kumar Aggarwal and Smt.Nita Pant who had made the bid jointly for

Rs.4 lacs. On 19.08.2002 the concerned court of the learned Civil Judge, Nainital

confirmed the sale of land by auction and directed issue of the sale

certificate. On 30.10.2002, the court noted that sale certificate has been issued under the signatures of the court.Â

4. The case of the applicant is that thereafter said Smt.Nita Pant and Mr.Rajesh Kumar Aggarwal sold the property to various purchasers and the

said property was purchased by the applicant vide sale deed dated 02.12.2010. It is further pleaded that this winding up petition was filed on

10.12.2001 and the OL was appointed as the provisional liquidator on 20.11.2002Â i.e. after the above sale was confirmed. Hence, it is pleaded that

the applicant is a bona fide purchaser and should be entitled to retain the possession of the said property. Reliance is placed on the judgment of this

court in this case itself dated 6.5.2005 reported as Reserve Bank of India v. Crystal Credit Corporation Ltd., 121 (2005) DLT 375.

5. The learned counsel for the OL has objected to this application. She has pleaded that the chain of title by which the applicant has become the title

holder is not clear. She has also pointed out that the Ex. Director whose statement was recorded never revealed about this particular property.Â

6. On a query from the court, the learned counsel for the OL was unable to clarify as to whether this property formed part of the assets of the

respondent company as per the balance sheet available of the respondent company.

7. It can be seen from the perusal of the facts that the property in question has been auctioned prior to the appointment of the OL as the provisional

liquidator.Â The auction has taken place pursuant to the order of the civil court and the sale was confirmed much prior to the appointment of the OL

as the liquidator.Â

8. As per judgment noted above of this court passed in this case reported as 120(2005) DLT 375Â this court in the said order dated 06.05.2005 was

dealing with a matter somewhat identical to the facts of this application.Â The legal position was spelt out by this court in paragraph 5 of the said

judgment dated 06.05.2005, which read as follows:Â Â Â Â Â

â??3. The undisputed position in law can be summarized as follows:

After the winding up orders are passed and the liquidator is appointed, it is he alone who has the power to take charge of the assets of the company.

Further, such assets can be sold only by the OL under the supervision of the

Company Court. Any transfer/sale of the assets by any other person is void. This legal position is stated in Section 536 of the Companies Act, 1956 (for short 'the Act') which reads as under:

536. Avoidance of transfers, etc., after commencement of winding up.-(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator and any alteration in the status of the members of the company made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by [the Court], an disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall [unless the Court] otherwise orders, be void.

4. Sub-section (2) of Section 536, however, empowers the winding up court to order otherwise which includes power to give its approval to such sales if in a particular case the circumstances so justify. It is because of this provision contained in Sub-section (2) of Section 536 that prayer made is by the applicant for approving the sale by this court.

5. Obviously, the purpose behind sub-section (2) of Section 536 is to prevent improper disposition or dissipation of property so as to affect the assets

otherwise available for distribution among the creditors of a company in winding up. But the court is, however, given the discretion to uphold all proper

transactions which otherwise appear to be proper transactions. What is to be borne in mind, while examining such a transaction, is that the assets of

the company should be made available for distribution *pari passu* amongst the creditors of the company and that no creditor should obtain an

advantage over his fellow creditors. In *Andhra Bank Ltd.Vs. Provisional Liquidator, Godavari Sugars & Refineries Ltd.*, reported as (1954) 24 CC

149 after scanning through the case law on the point culled out the following principles which are to be kept in mind in such cases:

(i) Transactions *bona fide* entered into and completed in the ordinary course of trade must be protected.

(ii) If the disposition is made for the purpose of preserving the business as a going concern, then also the discretion of the court must be exercised.

(iii) A disposition must not be validated merely because the party *bona fide*

entered into the transaction.

(iv) Knowledge of the presentation of the winding up is immaterial.

.....

8. The factors which weigh in favour of the applicant would be the following:

(a) Sale in question is conducted by the court at Nainital.

(b) This sale is in execution of a decree in favor of a decree holder.

(c) The execution itself was filed in the year 2001 and it can logically be deduced that the decree must have been passed prior to that date. Even order

to sell the property in auction was passed on 29th October, 2002. Winding up orders were passed this court in Delhi on 20th November, 2002. Within

15 days thereof the property was put to auction on 3rd December, 2002 at Nainital. The said winding up orders as on the date of auction were neither

in the knowledge of the Civil Judge, Nainital nor in the knowledge of public as citation was published in the newspapers only on 11th February, 2003.

However, by that date, the applicant had deposited the sale consideration and was put in possession of the property.

(d) Before putting the property to auction, it was got evaluated by a valuer appointed by the Civil Judge and the property is sold at a consideration

which is more than the value fixed by the valuer.

(e) Perusal of the auction report reveals that the necessary procedure which is required for auctioning such properties by the court was followed and

it was an open public auction in which number of persons participate. The bids were allowed to start a minimum price fixed in the valuation report and

inter se bidding took place in which the bidders kept on revising their bids and ultimately bid of the applicant at Rs. 6,05,000/-, being the highest bid,

was accepted.

9. From the perusal of the above order, in my opinion, there is a clear commonality of the facts in application that was the subject matter of the

adjudication of the court in the above case when compared to the facts of this case. The same orders would have to follow in this case

10. The application is accordingly allowed. The OL will not interfere with the peaceful possession of the applicant in this case. The application stands

disposed of.

11. The liberty is granted to the OL to take steps for realisation of the dues under

section 446 of the Companies Act, 1956 against the decree holder.Â Â

CA Nos.203-205/2010

12. List these applications for arguments on 20.08.2018.

CA No.4458/2016

13. The learned counsel for the OL seeks some time to file an additional affidavit opposing the present application.

14. List on 20.08.2018.