(2019) 09 CAL CK 0120

In the Calcutta High Court

Case No : Admirality Suits (AS) No. 3 Of 2017, 8, 9, 11 Of 2018, 1 Of 2019, General Application (GA) No. 2958, 3171 Of 2018, 114, 360 Of 2019, Tender Application (TA) No. 8, 11 Of 2019

Rigveda Maritime Pvt. Ltd And Others — APPELLANT

Vs

O & P Interested In Vessel M.V. Vsevolod Beletskiy And Others — RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Citation : (2019) 09 CAL CK 0120

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : A.Rashid, S.R.Bhattacharyya, B.Sarkar, Reetobroto Kumar Mitra, S.Dasgupta, S.N.Mookerjee, Soumabho Ghose, Anujit Mookherjee, S.Agrahari, Ratnanko Banerjee, Swatarup Banerjee, Sariful Haq, Shiladitya Bose, Joydeep Mukhopadhyay, Aniruddha Mitra, Rituparna Saha, Khushboo Choudhury,, Naishadh Bhatia, B.Singh Rajpurohi, Tilak Bose, Ashoke Kr. Jena, Meenakshi M, N.Adhya, Ratul Das

Judgement

Arindam Sinha, J

The Court:- In these admiralty suits the vessel sued is M.V. Vsevolod Beletskiy. It was arrested and came to be ordered for sale through Special Officer appointed. On compliance with directions for sale, auction was held and by order dated 25th July, 2019 made in AS 11 of 2018 (Soham Shipping Pvt. Ltd. vs. Owners and interested Parties in the Vessel M.V.Vsevolod Beletskiy), sale was confirmed and following directions made.

"The sale is confirmed to highest bidder on offer recorded in said report, at Rs.24.15 crores. Special Officer shall proceed to execute the sale in terms of, inter alia, sub-regulations (10) to (13) of regulation 5 in Calcutta Port Trust (Distraint or Arrest and Sale of Vessels) Regulations, 1989, as directions made upon him by Court. On contingency provided under the regulations, regarding successful bidder not following through, the vessel will be resold. Meanwhile, earnest money deposits from unsuccessful bidders be refunded to them. Entire sale proceeds or part thereof, as obtained by earnest and part payments, if as and when made up to period, in which successful bidder can remove the vessel or have earnest deposit forfeited, will be deposited by Special Officer, at the end of said period, with Registrar, Original Side.

On achieving deposit of sale value, Court will apply it against the claims, to decree on proof of them.

List on 26th August, 2019.

This order is made in the general applications treating them as on day's list. The applications are disposed of."

A person claiming to have memorandum of agreement for sale dated 24th April, 2019, with the owners, intervened. Demand draft dated 29th July, 2019 for Rs. 7 crores was handed up to Court and, inter alia, following said in order dated 30th July, 2019.

"By reason of tender of Rs. 7 crores by said instrument and agreement disclosed with owners of the ship, Court is inclined to view applicant as an interested person who wants to buy the vessel. Court is also conscious that highest bidder participated in due process and got sale confirmed in its favour. The situation thus emerging is of two bidders for the vessel. Time schedule given to successful bidder is in place and running.

List this application on 6th August, 2019 for contesting bids, if any. This adjournment will, in no way, affect highest bidder's right to purchase, in event competing bid is not received from applicant on adjourned date. The demand draft tendered by applicant be encashed by Registrar, Original Side and deposited in short term interest bearing deposit account to be opened with a nationalised bank. It is made clear, any time overrun and monetary consequences thereof, arising by reason of adjudication of this application, will be deducted from this deposit along with Registrar's commission. It is further made clear that on adjourned date, applicant must be ready to deposit difference between money already deposited and its accepted bid. Highest bidder, on the other hand, if successful, will be bound by time schedule of sale directed by order dated 25th July, 2019."

(Emphasis supplied)

Here it would be convenient to set out order dated 13th August, 2019 for record of submissions made on behalf of highest bidder, opposing said applicant wanting to have the sale set aside.

"Mr. Mitra, learned senior advocate appears on behalf of applicant in TA 8 of 2019 / GA 6 of 2019 made in AS 11 of 2018 being item no.29 in day's list. He hands up banker's cheque dated 3rd August, 2019 for Rs.17 crores, drawn in favour of Registrar, Original Side. The cheque is handed back. Referring to record in order dated 30th July, 2019, he submits, his client has exhibited willingness and readiness to purchase the vessel. The sale should be set aside and his client allowed to bid for it.

Mr. Mookherjee, learned senior advocate appears on behalf of successful bidder. He submits, his client has confirmation of sale in its favour. He relies on judgments of Supreme Court to submit, this confirmation cannot be set aside at applicant's instance. Firstly, on Valji Khimji And Company versus Official Liquidator of Hindustan Nitro Product (Gujarat) Limited reported in (2008)9 SCC 299, to paragraphs 2 to 8, 11, 12, 28 and 30. Next on Sadashiv Prasad Singh versus Harendar Singh reported in (2015)5 SCC 574, to paragraphs 17 and 19. Lastly, on Vedica Procon Private Limited versus Balleshwar Greens Private Limited reported in (2015)10 SCC 94, to paragraphs 37 to 40, 47 and 51. Referring to paragraphs 3 and 5 in the application he submits, it does not disclose any element of fraud or collusion that can be relied upon to set aside the sale. He submits, in seeking to assert a right under purported agreement with owners of the vessel, only his client's accepted bid has been matched. The agreement discloses agreed consideration for the vessel to be USD, 50,25,000/-.

This conduct of applicant also disentitles it to have discretion of Court, if exercised, in its favour. Allegation of a common deal has been made but agreement dated 25th April, 2019 disclosed in respect of the vessel, is terminable at option of seller on 25th July, 2019. Omission, if any on part of seller amounting to breach of such agreement would not give cause to applicant to have set aside the sale. He reiterates his reliance on law declared by Supreme Court with regard to setting aside of confirmed sale. Special Officer appears and hands up brief of documents to show cost incurred for the sale, inclusive of GST, to be Rs.17,95,206.60.

Paucity of time intervenes. On query from Court Mr. Mitra submits, he will take instructions regarding whether his client would put in bid of Rs.35 crores for the vessel, the amount being approximate rupee value of agreed consideration USD 50,25,000/-.

In event, on adjourned date, applicant puts in bid of Rs.35 crores by way of instrument duly issued, Court will invite successful bidder to also bid, depending on first adjudication of successful bidder's contentions recorded above. Till then, status quo in respect of the vessel be maintained.

(Emphasis supplied)

List under heading 'For Orders' on 21st August, 2019 marked at 2 pm."

There was further hearing and order dated 21st August, 2019 made, from which following is set out:

"Mr. Reetobroto Kumar Mitra, learned advocate appears on behalf of Golden Fortune Ltd. S. A., 9, Temasek Boulevard, # 38-03 Suntec Tower 2, Singapore

038989. He submits, his client is interested to buy the vessel. He hands up two instruments. First is draft dated 1st August, 2019 drawn on United Overseas Bank Limited, Singapore in favour of Registrar, Original Side, to Bank of America, N.A., valuation mentioned, USD 11,00,000/-. Second is Manager's cheque dated 13th August, 2019 drawn by HDFC Bank in favour of Registrar, Original Side for Rs.1.95 crores. He submits, adjournment be granted for his client to obtain and tender instruments to take aggregate value of his client's bid for the vessel, to Rs.36 crores. He submits on instructions, terms contained in orders dated 30th July, 2019, 13th August, 2019 and this day along with all observations of Court recorded therein, his client is on notice of and agreeable to. He wants adjournment till 11th September, 2019.

The instrument for payment by USD is returned to Mr. Mitra. Registrar, Original Side will encash the instrument for Rs.1.95 crores and deposit in short-term interest bearing deposit account to be opened with a nationalized bank. Registrar will also encash deposit made against instrument tendered for Rs.7crores. The encashment value including interest is to be paid out to Mr. Aniruddha Mitra's client, upon deducting therefrom Registrar's commission prescribed by Rules. It is made clear that Mr. Reetobroto Kumar Mitra's client, if does not bring a bid, by instrument tendered and to be tendered, of aggregate value Rs.36 crores, on 11th September, 2019, time between 30th July, 2019 and 11th September, 2019 will be time against which penal charges have to be paid and will be appropriated from Rs.1.95 crores tendered by instrument today.

Mr. Banerjee, learned senior advocate appears on behalf of plaintiff and submits, the vessel was valued at Rs.58 crores, both by his client and port authorities. Global tender was not made. His client apprehends further and other claims against the vessel to be made, which then will render his client's relief in suit, defeated. He, therefore, wants every effort being made towards obtaining higher bid in respect of the vessel, for it to be sold.

Ms. Adhya, learned advocate appears on behalf of defendant no.2 in AS 3 of 2017 (Rigveda Maritime Pvt. Ltd. versus The Owner and Parties Interested In Vessel M.V. Vsevolod Beletskiy & Anr.) and submits, her client's claim against the vessel is Rs.80,29,226/- and not what was erroneously recorded on 25th July, 2019.

At this stage Mr. Aniruddha Mitra submits, his client does not want return of the deposit. His client wants to avail opportunity to bid on 11th September, 2019. It follows and his client is on notice that all terms and observations recorded in earlier orders then automatically will visit his client. In view of this turn around, direction above upon Registrar to encash deposit against tender of Rs.7 crores, will stand in abeyance for the time being. Status quo be continued till 11th September, 2019.

List on 11th September, 2019 marked at 2 pm."

(Emphasis supplied)

Today Mr. Reetobroto Mitra hands up two drafts for pay out in aggregate of USD 51,00,000/-, drawn in favour of Registrar, Original Side. He submits, on an approximate rate of conversion and taking into account money already deposited by his client, aggregate value tendered by his client would be Rs. 38 crores. His client's bid is, however, for Rs. 36 crores. This bid should be accepted as effect of order dated 30th July, 2019 (supra) is that confirmed sale had already been set aside.

Without prejudice to such submission he relies on judgment of Supreme Court in Divya Manufacturing Company (P) Ltd.vs. Union of India reported in (2000) 6 SCC 69, paragraph 11.

Mr. Mookherjee relies on record in order dated 13th August, 2019 (supra). He submits, confirmed sale has not yet been set aside. He reiterates his reliance on said two later judgments of Supreme Court in Valji Khimji (supra) and Vedica Procon (supra) to submit, Divya Manufacturing (supra) is distinguishable on many counts. Firstly, sale confirmed in Divya Manufacturing (supra) was in liquidation. He relies on paragraphs 13 and 16, where said Court emphasized that Court is custodian of interest of creditors and its duty to see that price fetched at the auction is an adequate price even though there is no suggestion of fraud or irregularity. This here is a Court sale in exercise of admiralty jurisdiction. Secondly, it would appear from paragraph 16 of said judgment, there was specific sale condition 11, which empowered Court to set aside the sale even though it is confirmed, for interest of creditors, contributories and all concerned and/or public interest. There is no such condition in this notified sale, wherein his client duly participated and emerged as highest bidder. Thirdly, in Valji Khimji (supra) Supreme Court considered its earlier judgment in Divya Manufacturing (supra) and said, inter alia, as follows:

"Thus, the ratio in Divya Mfg. Co. (P) Ltd. was that if there is fraud then even after the confirmation the sale can be set aside because it is well settled that fraud vitiates everything. On the facts of that case, the Court was of the view that that confirmed sale deserved to be set aside."

He submits, this is said Court's interpretation of its earlier judgment and binding on all. Fourthly, in Vedica Procon (supra) Supreme Court while dealing with Divya Manufacturing (supra), did so in paragraphs 37 to 40. He laid special emphasis on paragraph 39, in which stands extracted a sentence from Navalkha & Sons vs. Ramanya Das reported in (1969) 3 SCC 537, to submit, the sentence extracted therein squarely applies to this case, in favour of his client. His client's offer has already been received on sale confirmed. He submits, Supreme Court by Vedica Procon (supra) declared what was recognised in Navalkha (supra) per sentence in paragraph 40 of the judgment, reproduced below.

"In other words, in Navalkha case, this Court only recognised the existence of the discretion in the Company Court either to accept or reject the highest bid before an order of confirmation of the sale is made."

He informs Court his client has preferred appeal against orders made at hearing on and from 30th July, 2019 onwards. He, however, does not pray for adjournment by reason of the appeals preferred not yet having been moved. He submits, the sale stands confirmed in favour of his client. As such, he is pressing for closure of this aspect, vacating the status quo and directions for delivery of the vessel to his client, on delivery order already having had been issued by Special Officer.

Mr. Ratnanko Banerjee informs Court, his client has preferred appeal from order dated 25th July, 2019 (supra), of confirmation of sale. He submits, though his client filed appeal, he too does not pray for adjournment on ground that the appeal is yet to be moved. His client had all along contended there should be global tender to fetch higher price for the vessel. His client's contention stands vindicated as even if money tendered by intending purchaser was deposited after sale was confirmed, difference between the tender and value at confirmed sale is Rs.12 crores. Adequacy of price was not an issue in judgments relied upon by Mr. Mookherjee. Considering the higher value, as can be achieved for the vessel notwithstanding belated tender, this Court should accept the higher bid.

Mrs. Ali, learned advocate appears on behalf of another person who now wants to bid. She hands up banker's cheque dated 9th September, 2019 for Rs.2 crores, payable in favour of Registrar, Original Side, to exhibit bona fide of her client, who, she submits, will match and better the bid of Rs.36 crores. The instrument is returned to her. Mr. Bose, learned senior advocate appears on behalf of added defendant in, inter alia, AS 11 of 2018 (Soham Shipping Pvt. Ltd. vs The O & P interested in the vessel MV Vselvolod Beletskiy). He reiterates his client's necessity of having the vessel sold and removed from the dock complex.

Mr. Aniruddha Mitra, learned advocate appearing on behalf of Sharva Shipping ING (said applicant) submits, per record in order dated 21st August, 2019 (supra), his client be permitted to have refund of deposit made by it without adjustment of Registrar's commission. He submits, in event Registrar's commission is payable on the deposit, this should be added to costs of sale and be recovered from sale proceeds.

It has been effectively demonstrated by Mr. Mookherjee that Supreme Court has twice interpreted its earlier judgment in Divya Manufacturing (supra). While in Valji Khilji (supra) said Court said that which is extracted above, in Vedika Procon (supra) it said, in Navalkha (supra) said Court only recognized existence of discretion in Company Court, either to accept or reject the highest bid before an order of confirmation of sale is made. Even though the sale here is in exercise of admiralty jurisdiction, applying the declaration of law on existence of discretion in Company Court, to this sale, it does not appear that after there has been confirmation of sale there is any discretion left to be exercised. This application of company law to admiralty jurisdiction cannot be disputed since the authorities relied upon are declarations of corporate laws. When order dated 25th July, 2019 (supra) was made, there was contention of Mr. Banerjee, in support of prayers in the applications of his client for setting aside sale procedure adopted, dealt with and disposed of by said order. That contention was not acted upon since sale had been duly conducted by Special Officer appointed. As such and in absence of a higher price offered, Court exercised discretion in confirming the sale in favour of highest bidder, on 25th July, 2019.

The instruments for aggregate value of USD 51 lakhs are returned to Mr. Reetobroto Mitra. In aforesaid orders it was made clear, consequence of adjudication of highest bidder's contention, if accepted, would, in effect, devolve ultimately on Mr. Reetobroto Mitra's client. Registrar, Original Side is directed to encash fixed deposit with regard to deposit tendered at Rs. 7 crores made by Mr. Aniruddha Mitra's client and upon deducting Registrar's commission, pay out the same on claim duly made by it through its advocate-on-record. Registrar's commission to be deducted from the deposit is not on account of sale, inasmuch as on adjudication it has been found that sale stood confirmed on 25th July, 2019.

This was a direction made at instance of said applicant and, therefore, the commission payable by it.

Special Officer will, on adjourned date, inform Court regarding amounts to be deducted on account of penal charges accrued by time overrun caused on intervention after sale was confirmed. Directions for adjustment of this amount from deposit of Rs.1.95 crores made by Mr. Reetobroto's client will be directed thereupon.

Special Officer will execute the sale on confirmation made by order dated 25th July, 2019. Time taken between 30th July, 2019 and till adjourned date will be factored in for reckoning time for delivery of the vessel and accrual of penal charges on time overrun.

List under same heading on Monday (16-09-2019) for report on sale and information to be furnished by Special Officer, direction made regarding deposit of Rs.1.95 crores and final disposal of GA 106 of 2019 in AS 11 of 2018 (Soham Shipping Pvt. Ltd. vs The Owners and Parties interested in the vessel MV Vselvolod Beletskiy) and all other applications regarding sale of the vessel.

