(2011) 07 DEL CK 0137

In the Delhi High Court

Case No : Writ Petition (C) 4944 of 2011 and CM No. 10007 of 2011 (for stay)

Royal Star Trading Company APPELLANT

Vs

IFCI Ltd. and Another RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:
Transfer of Property Act, 1882 — Section 55

Citation : (2011) 07 DEL CK 0137

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : N.K. Kaul and Vikram Mehta, for the Appellant; Suresh Dutt Dobhal and Rahul Tyagi for R1, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The Respondent No. 1 IFCI in the months of January/ February invited tenders for the sale of land, building, plant and machinery including miscellaneous and other assets of Telephone Cables Ltd. (TCL). It was represented in the Notice Inviting Tender (NIT) that Respondent No. 1 IFCI was the secured creditor of TCL and having right/power to sell the assets of TCL after acquisition under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The NIT mentioned the reserve price of various lots and required 10% of the reserve price to be deposited by way of earnest money along with tender, 25% of the bid amount to be paid on acceptance of the offer and remaining 75% of the sale price to be paid on or before 15th day of issuance of letter of acceptance of highest bid. The possession of the assets was promised to be delivered within 30 days from the date of receipt of full sale consideration.

2. The Petitioner in February, 2011 submitted its bid of Rs. 222 lacs for the lot of plant and machinery and other assets, the reserve price whereof was Rs. 217 lacs.

3. The bid aforesaid of the Petitioner was accepted and the Petitioner in accordance with the terms aforesaid of NIT, by 9th March, 2011 deposited the

entire sale consideration of Rs. 222 lacs with Respondent No. 1 IFCI.

4. The grievance of the Petitioner is that notwithstanding payment of the entire sale consideration, neither Certificate of Sale nor possession as promised was delivered to it leading the Petitioner to cancel its bid. Letters dated 5th April, 2011 and 19th April, 2011 were written by the Petitioner to Respondent No. 1 IFCI seeking refund of the entire sale consideration.

5. It is the case of the Petitioner that it subsequently learnt that TCL had filed an application before the Debt Recovery Tribunal (DRT) challenging the action of Respondent No. 1 IFCI under the SARFAESI Act; the said application was pending on the date of the NIT; the Petitioner claims to have further learnt that TCL had also preferred a writ petition in the Punjab & Haryana High Court and vide order dated 15th February, 2011 i.e. prior to the opening of the bids on 18th February, 2011 and demand for 25% of the bid amount, Respondent No. 1 IFCI had been restrained from confirming the sale. The Petitioner claims to have also learnt that Respondent No. 1 IFCI on 19th April, 2011 filed an application before the DRT seeking permission to confirm the sale in favour of the Petitioner and which application is still pending consideration and listed next on 19th July, 2011. The Petitioner claims that neither were the said facts disclosed in the NIT nor at the time of acceptance of the bid nor at the time of receipt of entire sale consideration from the Petitioner; that had all the said facts been disclosed, the Petitioner would not have bid and/or deposited amounts in terms of NIT.

6. The petition also discloses that the Respondent No. 1 IFCI also got filed from the Petitioner in April, 2011 through a lawyer engaged by the Respondent No. 1 IFCI only an application before the DRT seeking appropriate directions. The senior counsel for the Petitioner has contended that the Petitioner having deposited the entire sale consideration and upon being told that filing of the said application would expedite the matter, had without seeking independent legal advice acted at the behest of the Respondent No. 1 IFCI; however subsequently when it obtained legal advice it was advised that the confirmation of sale and the delivery of the goods for which entire sale consideration has been paid may take considerable time.

7. Hence the present writ petition has been filed seeking mandamus to Respondent No. 1 IFCI to refund the amount of Rs. 222 lacs together with interest at 18% per annum from the date of deposit till the date of payment. Mandamus is also sought against the Respondent No. 2 Reserve Bank of India (RBI) to take stringent action against the Respondent No. 1 IFCI for the malpractices practiced by it.

8. The senior counsel for the Petitioner has contended that the Respondent No. 1 IFCI in the NIT had represented that it was having right/power to sell the assets and to issue the Sale Certificate and to deliver possession thereof and concealed from the Petitioner and other bidders that the application of TCL was pending before the DRT or that the Punjab & Haryana High Court had restrained

Respondent No. 1 IFCI from confirming the sale. It is urged that non-disclosure of such relevant facts goes to the root of the matter and amounts to fraud on the part of Respondent No. 1 IFCI rendering the entire tender process void at the instance of the Petitioner. It is argued that Respondent No. 1 IFCI ought not to have received the sale consideration from the Petitioner, to the prejudice of the Petitioner and/or in any case upon the Petitioner demanding back the same, ought to have immediately refunded the same and is withholding the same without any valid justification. Reliance is placed on Capital Hotel and Developers Ltd. Vs. Delhi Development Authority where this Court held that the DDA being a public authority, as Respondent No. 1 IFCI also is, owed a duty to inform the auction bidders about the pendency of litigation and it was for the bidders to consider whether the same was a cloud on the title or not; that such information cannot be hidden. It was further held that if buying a property means buying a law suit, the vendor cannot say to the purchaser that the purchaser is bound to go forward with the transaction and it is open to the purchaser to say that non-disclosure of the fact is a material defect and that the bidder is entitled to annul the transaction. Reference in this regard was made to Section 55 of the Transfer of Property Act, 1882 and it was held that even if there was no impediment to the transfer, the cloud arising from pendency of litigation entitled the purchaser for disclosure of such information and non-disclosure would give a right to the purchaser to back out of the transaction. Accordingly mandamus directing refund of the amounts deposited by the bidder along with interest was issued.

9. The counsel for the Respondent No. 1 IFCI appears on advance notice. The pleas/arguments aforesaid of the Petitioner being all based on documents and which are not disputed, the counsel for the Respondent No. 1 IFCI has been heard. It was felt that if the petition is expeditiously disposed of and money refunded to the Petitioner, the other prayer of the Petitioner for a direction to the Respondent No. 2 RBI or to any other authority for investigation into the suppression and fraud practiced by the Respondent No. 1 IFCI and its officials need not be looked into.

10. The counsel for the Respondent No. 1 IFCI with reference to the application filed by the Petitioner before the DRT has contended that the Petitioner is not entitled to the relief claimed in this petition. However a perusal of the said application copy whereof has been filed by the Petitioner itself shows that all that the Petitioner stated therein was that the Petitioner had paid the entire sale price to the Respondent No. 1 IFCI. The Petitioner in the said application no where admitted that it was aware of the pendency of the application/objection of TCL or of stay by the Punjab & Haryana High Court against confirmation of sale.

11. There is no dispute that the admitted facts aforesaid were not disclosed in the NIT. Though the counsel for the Respondent No. 1 IFCI has sought to argue that the Petitioner had participated in the auction with knowledge thereof but there is no document in that respect. Moreover, the same does not affect the obligation of IFCI u/s 55 of Transfer of Property Act as held in Capital Hotels and

Developers Ltd. (supra)from making the disclosure and which disclosure was not made. Not only so, the respondent no.1 IFCI at least on the date of opening of the bid and on the date of receipt of final installment of bid/sale consideration from the petitioner was fully in the know that inspite of receipt of the same, it would not be in a position to deliver Sale Certificate or possession of the auctioned plant and machinery to the petitioner within 30 days as promised in the NIT. The respondent no.1 IFCI ought not to have accepted the balance sale consideration at least from the petitioner; acceptance of balance sale consideration is clearly to undue enrichment of respondent no.1 IFCI and to the prejudice of the petitioner. The petitioner was thus fully justified in demanding back the money and the action of the W.P.(C)4944/2011 Page 9 of 11 respondent no.1 IFCI in notwithstanding the said demand not refunding the amounts to the petitioner cannot be justified.

12. In the circumstances, need is not felt to call for the counter affidavit of Respondent No. 1 IFCI and Respondent No. 1 IFCI is held liable to immediately refund the sum of Rs. 222 lacs to the Petitioner.

13. The senior counsel for the Petitioner has pressed for interest from the date of deposit and till the date of refund. The said demand is also found to be justified. Interest was so awarded in Capital Hotel and Developers Ltd. (supra) also. However opportunity needs to be given to the respondent no.1 IFCI to file counter affidavit on the aspect of interest.

14. It has been suggested to the senior counsel for the Petitioner that subject to the principal amount being refunded immediately, the Petitioner may consider giving up the claim for interest. The senior counsel for the Petitioner on instructions has fairly stated that subject to the entire principal amount with legal costs being paid to the Petitioner within ten days of today, the Petitioner would not press the claim for interest. It is clarified that if amount and costs are not so paid, Petitioner will press for interest.

15. The aforesaid reasonable and fair stand of the Petitioner is found to be in the interest of Respondent No. 1 IFCI also.

16. The writ petition is accordingly disposed of with the following directions:

(i) Subject to the Respondent No. 1 IFCI refunding to the Petitioner the entire amount of Rs. 222 lacs received from the Petitioner within ten days from today i.e. on or before 26th July, 2011 together with legal costs assessed at Rs. 50,000/-, the claim of the Petitioner for interest against Respondent No. 1 IFCI and for investigation into the conduct aforesaid of IFCI and its officials shall stand abandoned/waived;

(ii) However if Respondent No. 1 IFCI does not pay the aforesaid amount within time as aforesaid to the Petitioner, the Petitioner besides being entitled to seek action for violation of the orders of this Court by Respondent No. 1 IFCI/its officers, shall be entitled to also press for interest and for the relief of investigation into the conduct aforesaid of Respondent No. 1 IFCI, by filing application for revival of this petition.

