(2006) 12 OHC CK 0026

In the Orissa High Court

Ruhatia Spinners (P) Ltd. APPELLANT

Vs

Rajashree Vanijya (P) Ltd. and Others RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Citation : (2007) 103 CLT 451 : (2008) 142 CompCas 426 : (2007) 78 SCL 415

Hon'ble Judges : R.N. Biswal, J;P.K. Mohanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—This appeal is directed against the order of the Learned Company Judge dated 8.9.2006 in Company Act Case No. 4

of 2002 and Misc. Case No. 73 of 2006 directing the Respondent No. 3 IDCOL to deliver possession of the units to Messrs Rajashree Banijya

Pvt. Ltd., Respondent No. 1 who was the highest bidder in the auction conducted by the Learned Judge for sale of those units.

2. Briefly stated the facts of the case are that Industrial Development Corporation of Orissa Limited is the holding company in respect of A. B. S.

Spinning Mills, Orissa Limited Respondent No. 2. In order to sale the A.B.S. Spinning Mills an advertisement was made on 13.1.2006 in the daily

news-papers inviting offers for Sonepur Spinning Mills and Baripada Spinning Mills of Respondent No. 2. Pursuant to the advertisement, Messrs

Ruhatia Spinners Private Limited, the Appellant herein, having its registered office at Karana Bazar, Akola in the state of Maharashtra submitted its

bid before the Asset Disposal Committee and on scrutinising the same it having been found to be eligible was permitted to participate in the bid.

The Appellant offered Rs. 1.41 crores for Sonepur Spinning Mills and Rs. 1.20

crores for Baripada Spinning Mills along with others. The offers

were placed before the Learned Company Judge. It filed Misc. Case No. 52 of 2006 on 7.7.2006 enhancing its bid to Rs. 1.75 crores for the

Sonepur Spinning Mill with the conditions that they are interested in taking over and running the mill. The Appellant again filed another application

(Misc. Case No. 62 of 2006) indicating therein that they are prepared to leave 60 acres of land to the IDC from out of the area available at

Sonepur Spinning Mill. Rajashree Vanijya Private Limited, Respondent No. 1, who had not approached the Assets Disposal Committee of the

IDC approached the Learned Company Judge by filing Misc. Case No. 46 of 2006 giving their offer to pay Rs. 7,75,77777.00 apart from Rs. 1

crore earlier deposited with the IDC by Essar (India) Limited. According to the Appellant, no document was offered by Respondent No. 1 to

show that it was eligible having fulfilled the pre-conditions for financial bid of the IDCOL which stipulates that the bidder must have annual turn

over of Rs. 10 crores at least in three audited annual accounts and must have net worth of Rs. 1 crore as on 31.10.2005. Learned Company

Judge by order dated 4.8.2006 directed Respondent No. 1 Messrs Rajashree Vanijya to deposit Rs. 7,75,77777.00 with IDCOL by 25.8.2006

while deferring consideration of Misc. Case Nos. 48, 52 and 56 of 2006 to 1.9.2006. It is pleaded that the Learned Counsel for the Appellant

was misguided that the matter would be taken up only on 25.8.2006 for final decision and, as such, did not remain present on 18.8.2006 in the

Court. On 18.8.2006 Respondent No. 1 deposited a draft for Rs. 7.75,77777.00 as per the direction of the Learned Company Judge dated

4.8.2006. The Appellant Company was directed by order dated 25.8.2006 to deposit a sum of Rs. 2 crores in shape of bank draft in the name of

the Official Liquidator, Orissa High Court, to prove its bona fides which the Appellant did on 1.9.2006. The Appellant company was further

directed by order dated 5.9.2006 to deposit a sum of Rs. 3,40,77777.00 in order to match the amount deposited by Respondent No. 1 before

the Court which the Appellant also had complied. Learned Company Judge by order dated 8.9.2006 directed Respondent No. 3 to hand over

possession to Respondent No. 1 of all the three units. Hence, the appeal.

3. Shri Ashok Mohanty, Learned senior Counsel for the Appellant, contends that

in view of order dated 25.8.2006 passed by the Apex Court in

SLP No. 14313 of 2006 directing maintenance of status quo as on date, the order dated 8.9.2006 passed by the Learned Company Judge

directing delivery of possession of the units to Respondent No. 1 is bad in law and on that ground alone the impugned order is liable to be set

aside. Respondent No. 1 having not made any disclosure about its nominee for three different units as well as their credential with regard to its

eligibility to participate in the bid, Learned Company Judge could not have entertained it to participate in the process of disposal of the industrial

units in question. It is urged that the Appellant having preferred the appeal in compliance with the order dated 4.9.2006 passed by the Apex Court

without giving reasonable opportunity to the Appellant, the order dated 8.9.2006 could not have been passed. The impugned order is further

assailed on the ground that Respondent No. 3 having invited offers and Respondent No. 1 having not given its offer participated by producing

relevant documents to prove its eligibility, it could not have been allowed to give its offer before the Learned Company Judge.

4. Learned Counsel appearing for Respondent No. 1 and other Respondents have taken a preliminary objection to the maintainability of the appeal

on the ground that there being no record to show that Mr. Niranjan is their authorised representative having been duly authorised by M/s. Ruhatia

Spinners Pvt. Ltd., a company incorporated under the Companies Act, he was not entitled to maintain the appeal on behalf of the company. It is

also submitted that the appeal had been filed on 11.9.2006 whereas the purported affidavit showing authorization is dated 26.10.2006 inasmuch as

the name reflected in the affidavit does not tally with the name in the portion which has been affirmed before the Notary. It is further urged that the

Appellant carried SLP No. 14313 of 2006 to the Hon''ble Apex Court challenging the orders dated 4.8.2006 and 18.8.2006 passed by the

Learned Company Judge in Company Case No. 4 of 2002 but the Apex Court did not pass any interim order. On 25.8.2006, the Learned

Company Judge directed IDCOL to hand over the amount received from Respondent No. 1 to the Official Liquidator. The amount paid by the

Appellant in shape of bank draft was also directed to be handed over to the Official Liquidator along with the amount of Rs. 1 crore which

IDCOL had received from M/s. Essar (India) Ltd. The Appellant was directed to submit its final offer for all the three units by 1.9.2006 and

deposit a sum of Rs. 2 crores in shape of bank draft.

5. On 1.9.2006, the Learned Senior Advocate for the Appellant-company made a statement that the company is ready to offer an amount of Rs.

8.91 crores and ultimately a memorandum was filed to the effect that the company is agreeable to pay an amount of Rs. 9 crores. However, the

Learned Company Judge directed that the matter should be listed on 5.9.2006 in the chamber for orders. The Apex Court did not entertain the

SLP with the observation that since an appeal lies against the orders, the petitioner should approach the Appellate forum within one week from

25.8.2006. However, status quo as regards possession was granted for one week from 4.9.2006. It is contended that the Appellant had alleged

that he was denied a fair opportunity of hearing and there was no justification for modification of the order dated 4.8.2006 passed by the Learned

Company Judge. The Appellant also has taken a ground that the order dated 4.8.2006 was unsustainable as the judicial proceeding could not have

been converted into bidding arena and since the SLP was dismissed and the present appeal is filed mostly on those grounds. It is further submitted

that the Appellant had not brought the Apex Court order to the notice of the Learned Company Judge nor did it challenge the said order in an

appeal as undertaken; rather it participated in the open bid made in the Court wherein the Respondent No. 1 was also one of the bidders. The

Appellant having withdrawn after offering a sum of Rs. 15.60 crores and the bid was approved in favour of Respondent No. 1 at Rs. 15.65

crores, it is not open to it to challenge the order.

6. In course of hearing of the appeal, we had called upon the Appellant to deposit a sum of Rs. 15.65 crores to match the offer made by

Respondent No. 1 and to conduct a bid to find out whether the Appellant is still interested to go for a higher bid. The Appellant, however, had

deposited the bank draft for the aforesaid amount but however Learned Senior Advocate submitted in the Court that the Appellant is not prepared

to participate in the bid since it is challenging the process of bidding before the Learned Company Court.

7. In view of the pleadings of the parties, the questions for consideration are

whether the appeal filed by M/s. Ruhatia Spinners Private Limited

represented through Mr. Niranjan is maintainable; whether in view of the order of the Apex Court dated 25.8.2006 refusing to interfere with the

orders dated 4.8.2006 and 18.8.2006 passed by the Learned Company Judge and having granted leave to the Appellant to prefer an appeal

against those orders and no appeal having been filed, the Appellant could maintain the present appeal against the impugned order; whether the

Appellant having taken part in the open bid made in Court on 8.9.2006 and having withdrawn quoting Rs. 15.60 Crores and the Respondent No.

1 having quoted Rs. 15.65 crores, it can make a grievance that the bid conducted by the Learned Company Judge was illegal and liable to be set

aside.

8. Appellant M/s. Ruhatia Spinners Private Limited is represented by one Mr. Niranjan, aged about 35 years, as reflected in the cause title of the

appeal memo. Misc. Case No. 9 of 2006 for stay has been sworn to by one Niranjan Patra, aged about 35 years, describing him in para-1 as the

Appellant. The appeal was presented on 11.9.2006. One Sriprakash Kaluram Agrawal, Director of M/s. Ruhatia Spinners Private Limited has

filed an affidavit on 26.10.2006 stating therein that the company has appointed Niranjan Patra son of Gajadhar Patra as the power-of-attorney

holder to present the appeal and it has been stated that the Appellant company accepts, adopts and affirms the pleadings and the affidavits already

made by said Niranjan Patra to be that of the company. The Respondents raised maintainability of the appeal on the ground that Niranjan is not the

authorized agent or power-of-attorney-holder to file the appeal since no document to that effect nor any averment has been made either in the

appeal memo or in the misc. case. The Appellant even after the objection raised has not amended the cause title describing Mr. Niranjan as Mr.

Niranjan Patra though affidavits have been filed authorizing Niranjan Patra as the power-of-attorney-holder to present the appeal. In such situation,

it cannot be assumed that Niranjan as described in the cause title of the memo of appeal is the same Niranjan Patra who was given the power-or-

attorney by the Appellant-company. In any event, Shri Niranjan Patra, even if is the power-of-attorney holder to present the appeal could not have

described him as the Appellant/petitioner, as has been stated in para 1 of the stay application Misc. Case No. 9 of 2006.

9. The contention of the Learned Counsel for the Appellant that in view of the order dated 25.8.2006 passed by the Hon''ble Apex Court in SLP

No. 14313 of 2006 directing to maintain status quo as on date, the impugned order dated 8.9.2006 passed by the Learned Company Judge

directing to hand over possession of the units to Respondent No. 1 is in clear violation of the principles of natural justice ignoring the claim of the

Appellant and in violation of the order of the Apex Court has to be rejected. The Apex Court by order dated 4.9.2006 in S.L.P.(Civil) No. 14313

of 2006 had passed the following order:

The impugned order is appealable before the Division Bench. We fail to see why the petitioner has not moved before Division Bench against the

order of the Company Judge.

Mr. V.A. Mohta, Learned Senior Counsel for the petitioner, states that within one week from today, the petitioner will move the Division Bench

against the impugned order of the Company Judge. Permission granted.

Status quo as regards possession to be maintained for one week from today, the SLP is disposed of.

Thus the interim order of stay for one week from the date of passing of the order dated 4.9.2006 was passed by the Apex Court. This order,

however, at no point of time was brought to the notice of the Learned Company Judge nor any appeal was ever filed as against the orders

impugned before the Apex Court within the time granted by the Apex Court. The orders passed by the Apex Court in the SLP at the instance of

the Appellant having not been brought to the notice of the Learned Company Judge, there is no illegality or infirmity in the order dated 8.9.2006. It

is interesting to notice that the Appellant had participated in the proceeding before the Learned Company Judge on 8.9.2006, took part in the bid

and offered an amount of Rs. 15.60 crores for purchase of the three units in question and became the second highest bidder, the first bidder being

Respondent No. 1 The Appellant having taken part in the bid before the Learned Company Judge without bringing to the notice of the Court the

interim order, if any, passed by the Apex Court, it cannot complain that the order was in violation of the stay order passed by the Apex Court or in

violation of the principles of natural justice.

10. The Appellant took part in the proceeding before the Learned Company Judge, participated in the bid along with others including Respondent

No. 1 and offered Rs. 15.60 crores whereas Respondent No. 1 became the highest bidder having offered Rs. 15.65 crores. Having become

unsuccessful in the bid, it is not open to the Appellant to turn around and challenge the process or the bid conducted by the Learned Company

Judge.

11. In the present appeal also during the hearing of the case, the Appellant having contended that it is ready to match or even go for higher offer

than Respondent No. 1, in order to give opportunity to it, this Court directed the Appellant to first deposit a sum of Rs. 15.65 crores by way of a

bank draft and then participate in the bid and compete with Respondent No. 1 The Appellant had filed the bank draft for an amount of Rs. 15.65

crores and when the matter was taken up and the parties were asked to give their offer, the Appellant declined to give any offer on the ground that

since it is challenging the bid conducted by the Learned Company Judge, it cannot participate in the bid during the hearing of the appeal.

Admittedly, Respondent No. 1 was the highest bidder having offered Rs. 15.65 crores as against Rs. 15.60 crores offered by the Appellant. In

such view of the matter, we do not find any merit in the appeal to interfere with the orders passed by the Learned Company Judge and, as such,

the appeal is dismissed. The bank draft deposited by the Appellant be returned to it on proper application and identification.

R.N. Biswal, J.

12. I agree.

