

(2017) 12 DEL CK 0486

In the Delhi High Court

Case No : Company Petition No. 333 Of 2010, CA Nos. 1664, 2375 Of 2011, 2002, 2140 Of 2012, 1843 Of 2013, 905, 4542, 4587 Of 2016, 113, 816, 1113, 1156, 1157 Of 2017, OLR No. 255 Of 2017

Sameer Sharma

APPELLANT

Vs

M/S Triveni Infrastructure Development Co Ltd

RESPONDENT

Date of Decision : 22-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0486

Hon'ble Judges : Yogesh Khanna, J

Bench : Single Bench

Advocate : Anup J. Bhambhani, Jaypreet Singh, Ruchi Sindhwani, Megha Bharara

Judgement

Yogesh Khanna, J

CA No. 4587/2016 and CA. No. 905/2016

1. Both these applications pertain to the same issue as to if the Official Liquidator is liable to refund an amount of Rs. 6,01,34,307/- along with interest

@ 4% p.a. to the applicant as was directed vide order dated 08.02.2016.

2. It is the case of the Official Liquidator that an amount of Rs. 8,32,34,307/- was allegedly paid by M/s Sanchar Nest Sahkari Awas Samiti Ltd.

(hereinafter referred to as "the Awas Samiti") for purchase of a parcel of land ad-measuring 27455.80 sq.mts situated in Village Mehrauli, Pargana,

Tehsil Dasha, Ghaziabad, U.P. which in fact was owned by four different companies namely, (a) Triveni Infrastructure Development Company

(610.14 sq.m), (b) RMS Club & Resorts Ltd. (16,485.16 sq.m), (c) Chahat Garments Pvt. Ltd. (8,983.63 sq.m) and (d) Rewari Developer Pvt. Ltd.

(1,376 sq.m). The land was directed to be sold on "As Is Where Is And Whatever

There Is Basis" and was being sold with the consent of all the companies. It is alleged the said land was purchased prior to the winding up of proceedings and Sanchar Nest had paid only an amount of ` 15 lakh to the company (in provisional liquidation) on 27.01.2010. This Court directed the sale of the land be carried out by way of open auction under the supervision of the Court prior to passing of an order appointing the Official Liquidator as a Provisional Liquidator of the company. M/s Sanchar Nest participated in the auction and placed its bids. Vide order dated 27.07.2011 the applicant was successful in its bid for purchasing the land at Rs. 23.10 crores and out of which it had paid an amount of Rs. 8.32 crores, the bid amount, including R s. 2.31 crores as the initial amount. However, the applicant company did not further carry out the transaction and applied for refund of its amount paid. Vide order dated 08.02.2016 the Official Liquidator was directed to refund the amount of Rs. 6,01,34,307/- @ 4%.

3. It was argued by learned counsel for the Official Liquidator since only an amount o f R s. 15 lakh was paid to the company in provisional liquidation so only such amount can be refunded to the applicant herein.

4. Learned counsel for the Official Liquidator also referred to an affidavit of P. Kumar, the ex-director of the respondent company which show the amount has not been fully paid to Triveni Company and rather was paid to four companies and to the investors and hence no amount is payable per order dated 08.02.2016.

5. Mr. Bhambani, learned senior counsel appearing on behalf of Awas Samiti has countered the submissions of the learned counsel for the Official

Liquidator while referring to various documents, orders etc. to press his claim. The learned counsel referred to the minutes recorded on 23.02.2011 at

the office of Official Liquidator in the matter of Triveni Infrastructure Development Limited in the presence of (i) Official Liquidator; (ii) Assistant

Official Liquidator; (iii) the counsel for the Official Liquidator, (iv) and the directors of the company and it recorded:-

Pursuant to the Hon"ble High Court of Delhi order dated 15.02.2011 passed in the above said matter a meeting is convened today to

discuss the modalities to comply with the directions passed by the Hon"ble Court. Sh Madhur Mittal Director of the aforesaid company has

handed over the photocopies of the 19 title deeds of Ghaziabad land/property to

the office of the official liquidator and the same were handed over to the representative of ITCOT in the presence of signatory of the attendance sheet enclosed with this minutes. It is unanimously decided that valuation of the aforesaid land shall be done on 26.02.2011 and the representative of the above said company will identify the aforesaid land of property and provide all assistance to the valuer and the representative of office of official liquidator.

a) further, the learned Senior counsel for the Samiti also referred to the minutes of meeting dated 26.02.2011 again recorded at the office at Village

Mehrauli, Pargana, Tehsil Dasha, Ghaziabad, U.P. in the presence of officials of Official Liquidator, the Vice President, Deputy Manager of ITCOT

and authorized representative of the Triveni etc as follows:-

In compliance of Hon"ble High Court order dated 15.02.2011 and as per direction of worthy official liquidator vide authority letter dated

25.02.2011, I. M.S. Kataria, Official of the official liquidator visited at village Mehrauli, Pargana Tehsil, Dasna district Ghaziabad (U.P.)

for providing the inspection to the valuer namely ITCOT who were appointed by the Hon"ble court to evaluate the lands of the company. On

reaching at the site, we met Sh Brijesh Pahuja And Sh. Shailender, Authorised Representatives of M/s Triveni Infrastructure Development

Company Limited who identified the lands of the company. After that the inspection was provided to the official valuer of ITCOT with their

entire satisfaction. The undersigned has also took the photographs of the land. After inspection of the minutes was recorded at the site in

presence of following person their names are given above.

b) These minutes clarified total 19 title deeds of Ghaziabad land, were put for bid after valuation was done by ITCOT. On 26.02.2011 the verification

of the land was done and it was observed the said land belong to Triveni (company under liquidation).

c) The sale notice dated 29.06.2011 was issued qua the aforesaid land mentioning the above company is in liquidation and lands are being sold in one

lot with the consent of the companies as mentioned in the table and the demand draft was payable to the Official Liquidator, Delhi. The said land

belonged to four companies as is reflected in the sale notice and those companies were namely, M/s Triveni Infrastructure Development Company

Limited; RMS Club and Resorts Private Limited; M/s Chahat Garments Private Limited; and M/s Rewari Developer Private Limited.

d) The sale notice clarified the land ad-measuring 27,455.80 square meter, per the valuation report as on April, 2011 of M/s ITCOT Consultancy and

Services Limited was in the nature of an undeveloped residential land; its reserve price was fixed pursuant to Court's order dated 02.06.2011; the

details of the Khasra numbers could be obtained from the office of Official Liquidator; the tenders shall be opened before the Company Judge in

Court No. 11, Delhi High Court in the presence of the tenderers; the terms and conditions of the sale can be downloaded from the website of the

Official Liquidator.

e) Suffice is to say the sale was conducted under the directions of this Court and it was only pursuant to this auction notice the applicant-Awas Samiti

gave its bid and it was accepted.

f) Further on 22.03.2012, this Court passed the following order in this petition:-

On 13th May, 2011, this Court had passed an elaborate consent order with regard to the management and administration of the

respondent company. The presumption and assumption underlying the aforesaid consent order was the representation made by the previous

management of the respondent company on 15th February, 2011 that the assets of the respondent company were far in excess of its

liabilities. As recorded in the Order dated 15th February, 2011, this Court was informed by the ex- management that the tentative liabilities

of the respondent company were approximately Rs. 200 crores, while the value of its assets was in excess of Rs. 450 crores.

Subsequent to the order dated 13th May, 2011, this Court came to know that there was an income tax liability of about R s. 300 crores and

attachment orders against entire assets base of respondent company had been passed by the Income Tax Department. Though this

constituted suppression, but the Court still continued with the arrangement agreed between the parties as it was assured that the value of the

assets of the respondent company would take care of all liabilities including the genuine Income Tax liability and in the event of winding up

of the respondent company, the assets of the respondent company would not fetch the market price and the petitioners who are investors/flat

buyers would have little chance of recovering any money.

g) While conducting this auction, the Court created a Triveni Monitoring Committee to see least loss is caused to the investors. Since

farmers/investors were left high and dry the Official Liquidator was appointed as a Provisional Liquidator of the company to facilitate the filing of a

viable revival scheme. The SFIO was also directed to conduct an investigation into the matter and to examine as to whether any assets or fund of the

respondent company have been transferred or siphoned off to any other group of companies, individuals or entities and to examine as to if former

promoters and directors of the respondent company have floated any other company or entity or used any individual to siphon off any funds of the

company in liquidation or have violated any law, caused any loss of revenue to the State or created any assets in their name, its employees or their

relatives from the funds of the company in liquidation or from the investors of the company under liquidation and would also examine the legal status

of the projects launched by the former promoters and directors of the company under liquidation.

h) The findings of the investigation by SFIO, in particular para Nos. 12, 12.1 wherein during the course of investigation, it was found that the

promoters of TIDCO namely Madhur Mittal and Sumit Mittal have floated/acquired 17 number of subsidiaries company which included, RMS Club

and Resorts Private Limited; M/s Chahat Garments Private Limited; and M/s Rewari Developer Private Limited and have invested about Rs. 73.00

Lacs in these companies which money belong to M/s Triveni Infrastructure Development Limited Company (TIDCO). During the course of

investigation and on perusal of the balance sheets of remaining subsidiaries companies it was observed that most of the subsidiaries did not have a

significant business activity, though the promoters of TIDCO - Madhur Mittal and Sumit Mittal have been creating/purchasing assets in the name of

these subsidiaries companies by using the funds of TIDCO. The details of the funds belonging to TIDCO used for purchasing/creating assets in the

name of subsidiaries have been explained in the report.

6. Learned Senior Counsel for Awas Samiti then referred to an order dated 17.10.2012 passed by this Court in Company Petition No. 39/2009

wherein also this Court observed:-

The TMC, Board of directors and Executive Committee (appointed in terms of order of this Court dated 13.05.2011) are accordingly discharged.

Learned counsel for the Official Liquidator, at this stage, points out that the claimants in this company would be several thousands. The

infrastructure available with the Official Liquidator may not be sufficient to deal with the aforementioned claims. On his oral request, a

Committee is accordingly appointed. The new Committee shall be of two members comprise of (1) Hon''ble Mr.Justice (Retd.) S.N. Aggarwal

and (2) M/s Pankaj Oswal and Company. Each member of the Committee shall be paid a fee of R s. 50,000/- per month. The Committee is

constituted initially for a period of one year. The object and purpose of this Committee shall in first instance be to sell the properties of this

company which have been identified and are situated at Ghaziabad, Dharuheda, Rewari and Faridabad. The funds obtained from the sale

of the above referred properties will form "corpus fund" of the company which will be utilized by the Committee to pay off its creditors, both

secured and unsecured. The Committee is also permitted to invite claims from its creditors and for this purpose, advertisements be effected in

"Indian Express" (English edition) and "Jansatta" (Hindi edition).

This Court has been informed that there are more than Rs. 8 crores lying with the TMC. Since the TMC is discharged, the funds lying with

the TMC be transferred into the account of the Official Liquidator.

7. In Company Appeal No. 32/2014, filed by Awas Samiti, the Division Bench passed an order dated 11.07.2014 which notes:-

18. In this view of the matter, it would be most unfair to the appellant to direct that the payment of Rs. 8.32 crores and odd be treated as an

amount paid under the Memorandum of Understanding given the fact that all parties as well as the Courts have accepted and treated the

amount as a payment made by the appellant towards its bid amount for participating in the auction undertaken by the Court. The parties

having accepted the change of status of the payment made by the appellant cannot go back from the same. The payment, therefore, cannot

be treated as a payment under the Memorandum of Understanding and the appellant cannot be called upon to stand in the queue of

creditors before the Official Liquidator to await the refund of such amount as it may be entitled to. It is so directed.

8. The learned senior counsel argued the funds of Rs. 8.00 Crore lying with the TMC were transferred in the account of Official Liquidator and hence

the Official Liquidator cannot say it has no amount with him to pay to the applicant. Admittedly the applicant had paid an amount of Rs. 8,32,34,307/-

to TIDCO and balance consideration was to be paid but could not be paid.

9. The amount so paid to the applicant herein admittedly was not to be treated as a payment under the Memorandum of Understanding and as per the

Division Bench's order the appellant was not to stand in the queue of the creditors to wait refund of such amount as it may be entitled to.

10. Learned senior counsel then referred to para No. 36 of the reply dated 3.05.2013 of the Official Liquidator to the CA No. 256/2013 in Company

Petition No. 39/2009 filed by Awasi Samiti which notes:-

That in response to the submissions made by the applicant from Paragraph (i) to (xi) in support of release of 32,153 Sq. yard of the land, it

is stated that the said land is not under the possession of the Official Liquidator as in view of the order dated 11.02.2013 passed by the

Hon'ble Division Bench in Company Appeal No. 94/2012, the possession of the same was not taken over by this office. It is further

submitted that the applicant had made a payment of Rs. 7,07,34,707/- to the investors of the company (In Liqn.) through the Registrar of

Vigilance of this Hon'ble Court and a sum of Rs. 1.25 Crores has been deposited with the Registrar General of this Court. The same fact is

recorded in the orders of the Hon'ble High Court dated 25.05.2010 and 30.09.2010, subsequent the bid of applicant was confirmed vide

order dated 27.07.2011. Further, the official liquidator craves leave to refer and rely upon the preliminary submissions which may read as

part and parcel of reply to this para.

11. Here also the learned senior counsel alleges there being an admission by the Assistant Official Liquidator the applicant had made a payment of Rs.

7,07,34,707/-to the investors of the company through the Registrar Vigilance of this Court and Rs. 1.25 Crore has been deposited with the Registrar

General of this Court. The similar facts are also recorded in the orders dated 25.05.2010 and 30.09.2010 and 27.07.2011.

12. Hence, in view of various orders, some of which were noted above, an amount of Rs. 8 crores approx was directed to be released by the Triveni

Monitoring Committee to the Official Liquidator and it became corpus fund. Admittedly the Official Liquidator/court had inspected the title deeds of

the lands and only then the land was auctioned. The applicant since had made the payment as per Court's directions and thus cannot be put to any

loss. An order dated 08.02.2016 of this Court notes as under:-

3. It appears that the applicant- samiti entertained doubts qua the ability of the OL to give clear title with respect to the subject land. Issue

concerning this aspect, came to be recorded in this court's order dated 28.11.2011. The applicant-samiti in the course of proceedings held

on 28.11.2011 made it clear that it was not interested in going through with the purchase of the subject land, and that, it would be

interested in pressing only, prayer (B).

4. Accordingly, as noted above, notice was issued only qua prayer (B), which has been extracted above by me. To be noted, that order was

taken up in appeal. The Division Bench while disposing the appeal, vide its order dated 2.01.2012, observed that the issue pertaining to

forfeiture of 10% of the bid amount was still at large.

5. For the sake of completion, I may also state that there was yet another order passed by the Company Judge, which is order dated

01.04.2014. This order was also carried in appeal to the Division Bench in Co. App. No. 32/2014. The Division Bench disposed of the

appeal vide order dated 11.07.2014 wherein it, inter alia, observed that applicant need not stand in queue along with other creditors in

order to seek refund of its amount. The Division Bench, however, left the aspects concerning prayer (B) for decision by the Company Judge.

6. Having heard the counsels for the parties, it is clear that the issue, in substance, pivots on one singular aspect, which is, as to whether

10% of the total bid amount is to be refunded to the applicant-samiti.

6.1 There is no dispute with regard to the fact that the balance amount would have to be returned to the applicant-samiti. Both Mr. Behl,

who appears for the OFFICIAL LIQUIDATOR, and Mr. Malhotra, who appears for the ex-management do not dispute this position.

7. Accordingly, after deducting 10% of the total bid amount i.e. a sum of Rs.

2.31 crores, the balance sum, out of Rs. 8,32,34,307/- (being Rs. 6,01,34,307/-) is ordered to be refunded to the applicant- samiti.

7.1 Learned senior counsel, on instructions, says that though interest is sought at the rate of 24% per annum, the applicant-samiti would be quite satisfied if, the said amount i.e. Rs. 6,01,34,307/- is released, with simple interest, at the rate of 4% per annum. It is directed accordingly.

7.2 The Official Liquidator will release the aforesaid amount to the applicant-samiti, within three weeks from today.

13. This Court has already taken a decision on 08.02.2016 as to how much amount is to be paid to the applicant. No appeal has been filed against the

said order hence the issue qua the amount to be refunded to Awas Samiti has attained finality. However per OLR No. 255/2017 dated 11.10.2017

only an amount of Rs. 4,20,69,163/- is lying as on 30.09.2017 in the corpus fund of company in liquidation. Thus taking into consideration the overall

circumstances; the plight of other creditors who are also waiting their turn to get payments and though not placing the applicant in queue with them, I

direct the official liquidator to initially release an amount of Rs. 2.5 Crores to the applicant within four weeks from today. As the order dated

17/10/2012 notes the company has various properties at Ghaziabad, Dharudhera, Rewari and Faridabad, the learned Official Liquidator should file a

report confirming status of such properties of TIDCO and its subsidiaries and to disclose what steps it had taken till date to dispose those of and/or as

to how it proposes to deal with the same viz., sale and/or realise proceeds thereof to clear of claims of the company in liquidation at the earliest.

14. Since there is no clarity till date as to what happened to the money received by three companies viz., (a) RMS Club & Resorts Ltd.; (b) Chahhat

Garments Pvt. Ltd. and (c) Rewari Developer (P) Ltd. - which allegedly were the paper companies of Mr. Madhur Mittal and Mr. Sumit Mittal and

since its erstwhile management has conveniently allege they have no objection if money is paid by Official Liquidator to Awas Samiti, without even

disclosing the end use of the money received by their three companies aforesaid, it would be appropriate to issue notices to said three companies viz

(1) RMS Club and Resorts Private Limited; (2) M/s Chahat Garments Private Limited; and (3) M/s Rewari Developer Private Limited asking them to

disclose the bid amount received and if such amount on cancellation of bid was remitted to the Official Liquidator and if not then to return such

amount(s) so received. Admittedly, on cancellation of bid, these companies cannot be allowed to enrich themselves in an unjust manner. On realization

of funds from the companies above and on sale of land etc, further payments be made to the applicant.

15. Notices be made returnable for 09.03.2018.