(2007) 11 GUJ CK 0008

In the Gujarat High Court

Case No : Company Application No. 504 of 2007 in Official Liquidator Report No. 143 of 2007 in Company Petition No. 106 of 2002

Shraddha Aromatics P. Ltd. APPELLANT

Vs

Official Liquidator of Global Arya Industries Ltd. and Others RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:

Citation : (2009) 147 CompCas 322 : (2009) 94 SCL 288

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Pranav G. Desai, for the Appellant; Mrugesh Jani and A.S. Asthawadi, for second respondent and R.D. Dave, for the third respondent, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—The applicant has taken out this judge''s summons praying for recalling of the order dated August 30, 2007 passed in O.L.R. No. 143 of 2007 confirming the sale of lot No. A consisting of land, building, plant and machinery, furniture and fixtures and all other movables (except records) at L.S. No. 202/3P, SIDC Main Road, village Veraval (Shapar) taluka Kotdasangani, district Rajkot in favour of Shri Bipin S. Lathia, i.e., respondent No. 2 and to accept and confirm the offer of the applicant for Rs. 151 lakhs or in the alternatively, re-auction the aforesaid properties in the interest of justice. The applicant has also prayed for the direction to the official liquidator not to hand over the possession of the aforesaid property to respondent No. 2 and not to execute the sale deed/ conveyance deed in favour of respondent No. 2.

2. This Court has issued notice on October 30, 2007. At the time of issuance of notice, this Court has observed that only with a view to show its bona fide, the applicant has tendered the demand drafts and cheque of 1.41 crores and an amount of Rs. 10 lakhs has already been paid as EMD lying in the office of the official liquidator. All these cheques and demand drafts were handed over to

learned Counsel appearing for the official liquidator who waived service of notice and notice was issued on the rest of the respondents. The court has also granted ad-interim relief restraining the official liquidator from handing over the possession to the successful bidder and if the remaining amount has not been paid by him by that time, the same should not be accepted.

3. Heard Mr. Pranav G. Desai, learned advocate appearing for the applicant, Mr. Mrugesh Jani, learned advocate appearing for the official liquidator, Mr. A. S. Asthawadi, learned advocate appearing for respondent No. 2 and Mr. R. D. Dave, learned advocate appearing for respondent No. 3.

4. Mr. Desai has submitted that when the official liquidator has filed O.L.R. No. 143 of 2007 for confirmation of sale in favour of respondent No. 2, the applicant has also participated in the bid and ultimately the bid of respondent No. 2 was accepted and confirmed for Rs. 1.27 crores for lot No. A. The applicant was desirous of purchasing the said lot No. A and has preferred Company Application No. 450 of 2007 for recalling of the order dated August 30, 2007, by offering Rs. 1.41 crores. However, the said application was rejected as the applicant was not in a position to deposit the said amount of Rs. 1.41 crores at that time. Mr. Desai has further submitted that till the full consideration is paid coupled with the sale deed is not executed, no rights, title would vest with the successful bidder and since the applicant has offered higher substantial price, the same would certainly benefit the secured creditors and workers of the company. He has, therefore, submitted that in the matter of sale of the properties of the company in liquidation by auction, the courts'' endeavour would be to fetch maximum price and hence, the offer made by the applicant for Rs. 1.51 crores for the very same property which was sought to be purchased by respondent No. 2 at Rs. 1.27 crores should be considered and the order passed by this Court for confirming the sale in favour of respondent No. 2 should be recalled. In support of his submission, Mr. Desai has relied on the decision of the hon''ble Supreme Court in the case of Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, wherein the hon''ble Supreme Court has held that it is the duty of the court to see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. It is further observed in the said judgment that before the delivery of possession and execution of sale deed, if certain offers are made by the parties, the same can certainly be considered by the courts. Mr. Desai has, therefore, submitted that even in the present case also, the possession of moveable property has not been handed over nor the sale deed of the land and building is executed in favour of respondent No. 2 and hence, the offer made by the applicant for Rs. 1.51 crores should be accepted.

5. Mr. A.S. Asthawadi, learned advocate appearing for respondent No. 2, on the other hand, has strongly opposed this application. He has raised several legal contentions opposing this application and also relied on various judgments of the High Court as well as the hon''ble Supreme Court. He has submitted that the

applicant had earlier preferred Company Application No. 450 of 2007 which was rejected by this Court vide order dated October 11, 2007. The said application was absolutely for similar relief which is prayed for in the present application. The said order of rejection has not been challenged by the applicant. Therefore, the same has become final. He has, therefore, submitted that the present application moved by the applicant is barred by principles of estoppel as no further application can be filed for the same relief which was rejected by this Court earlier. He has further submitted that there is an order of confirmation of sale in favour of respondent No. 2. The auction was held before this Court and the present applicant was also a party and had participated in the auction. Being the highest bidder, this Court vide order dated August 30, 2007, confirmed the sale in favour of respondent No. 2. Initially, respondent No. 2 had paid EMD. Thereafter, 25 per cent. of sale amount was paid and before issuance of notice in the present application, respondent No. 2 had almost paid Rs. 89 lakhs and as on today, the entire amount of sale consideration has been paid by respondent No. 2. He has, therefore, submitted that the present application should not be entertained by this Court.

6. Mr. Asthawadi has further submitted that the property which was sold by auction to respondent No. 2 was valued at Rs. 64 lakhs as per the valuation report and the highest offer received by the sale committee was of Rs. 67 lakhs. During the auction, the highest offer of respondent No. 2 was Rs. 127 lakhs, which is approximately double the amount of valuation. The present applicant had offered Rs. 141 lakhs earlier and since the applicant could not deposit the said amount, Company Application No. 450 of 2007 was rejected. He has further submitted that the present application is moved by the applicant only with a view to undo the confirmation of sale in favour of respondent No. 2 and hence, the same should not be entertained by this Court. He has further submitted that it is a normal practice adopted by this Court that if during the auction, a party has participated and thereafter the said party withdraws at one stage from the auction, is not allowed to re-enter at a later stage. The applicant should not, therefore, be permitted to upturn the sale confirmation made in favour of respondent No. 2 without any reason available in law. He has further submitted that there are catena of judgments of this Court as well as the hon''ble Supreme Court on the issue and only in cases of fraud, inadequate price of the assets, lack of following proper procedure in auction, inability or default by the purchaser in payment as per schedule of payment, etc., the court would interfere. None of the ingredients is satisfied in the present application and hence, there is no reason to interfere in the order of confirmation of sale passed by this Court earlier and the application is straightaway required to be rejected.

7. In support of his submissions, Mr. Asthawadi relied on the decisions of the hon''ble Supreme Court which are as under:

Navalkha and Sons Vs. Ramanuja Das and Others,

Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, Motors and Investments Ltd. Vs. New Bank of India and Others,

Wellworth Vanijya Pvt. Ltd. Vs. Chowdhury Udyog Pvt. Ltd. and Another,

Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others,

Sharawan Kumar Agarwal v. Shrinenp Investment Ltd. [1990] 68 Comp Cas 52 : [1990] 2 Comp LJ 231 (Cal).

8. Considering the above submissions and the judgments referred to and relied upon by him, Mr. Asthawadi has strongly urged that the application moved by the present applicant deserves to be rejected.

9. Mr. R.D. Dave, learned advocate appearing for respondent No. 3 secured creditor has submitted that since the higher offer is made by the present applicant, the same should be accepted as it will benefit the secured creditors as well as the workers.

10. Mr. Mrugesh Jani, learned advocate appearing for the official liquidator has also supported the case of the applicant.

11. The court has also asked Mr. A. S. Asthawadi, learned advocate appearing for respondent No. 2 to raise his offer. However, he declined to raise his offer.

12. After having heard learned advocates appearing for the respective parties and after having considered the earlier orders passed by this Court in respect of confirmation of sale as well as various authorities cited by learned Counsel appearing for respondent No. 2 before the court, the court is of the view that the offer made by the present applicant for purchase of the property of lot No. A of the company in liquidation deserves to be accepted. It is true that the applicant has earlier participated and at that time, respondent No. 2 was successful bidder. Even after confirmation of sale in favour of respondent No. 2, the applicant has moved Company Application No. 450 of 2007. However, at that point of time, when the court has asked the applicant to deposit the entire purchase price of Rs. 1.41 crores, the applicant could not deposit the said amount and ultimately, the said application was rejected on October 11, 2007. Within a period of 20 days thereafter, the applicant has moved the present application making again higher offer to the extent of Rs. 1.51 crores. At the time of issuance of notice, just to test the bona fides of the applicant, the applicant has shown its willingness to deposit the entire amount of Rs. 1.51 crores and in fact the amount was deposited with the official liquidator and only after satisfying about it, the court has issued notice and granted interim relief.

13. If the above conduct of the applicant is to be viewed in light of the latest judgment of the hon''ble Supreme Court in the case of Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, , it is clear that though the sale was confirmed in favour of respondent No. 2, neither the possession of the movable properties was handed over nor the sale deed was executed in favour of respondent No. 2. Unless and until these formalities are over, it cannot

be said that the transaction is complete and before that, if higher offer is made, the court would certainly consider and at that point of time, it is to be seen as to whether the earlier transaction is by virtue of fraud. The real criteria is that the property of the company in liquidation should fetch maximum price and whether the properties can be adjudged on the basis of the offers which are received. Here in the present case, the applicant has offered Rs. 1.51 crores. If that is to be considered as market value then in that case, certainly the offer of Rs. 1.27 crores made by respondent No. 2 and accepted by the court earlier cannot be said to be an adequate price and hence, the court is well within its power to reconsider the case. The authorities cited by the learned advocate appearing for respondent No. 2 are confining to the facts of those cases. Even in the case of Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, , a distinction was sought to be drawn by submitting that there was condition laid down in the tender document empowering the court to set aside the sale. Irrespective of the fact whether any such condition is there or not, the court is well within its power to reconsider its decision especially when higher amount is offered and ultimately, it is in the advantage and benefit of the secured creditors and workers.

14. Even the Division Bench of this Court has taken the view in O. J. Appeal No. 80 of 2007 decided on June 28, 2007, where the learned single judge has rejected the application for de-confirmation of sale and while considering the higher offer made by that appellant, since the original successful bidder had increased its offer to match with the offer made by the appellant in the appeal, the matter was accordingly decided.

15. Considering the over all view of the matter and looking to the facts and circumstances of the present case, the court is of the view that since the present applicant is offering Rs. 1.51 crores and it is already deposited with the official liquidator, there is no reason not to accept the said offer. Therefore, the order dated August 30, 2007, passed by this Court in O.L.R. No. 143 of 2007 is hereby recalled and the sale of lot No. A of the company in liquidation confirmed in favour of respondent No. 2 is hereby cancelled. The court hereby confirms the sale of lot No. A of the company in liquidation in favour of the present applicant for Rs. 1.51 crores. Since the entire sale consideration has already been deposited by the applicant with the official liquidator, the official liquidator is hereby directed to hand over the possession of the movables within one week from today and the sale deed be executed in favour of the present applicant within one week from the date of receipt of the draft of sale deed from the present applicant.

16. Since respondent No. 2 has already paid an amount of Rs. 1.27 crores, now the said amount is required to be refunded to respondent No. 2. The equity, however, demands that respondent No. 2 should be adequately compensated by way of interest on the said amount. The present applicant is, therefore, directed to pay interest at 12 per cent. per annum on the actual amount of respondent

No. 2 lying with the official liquidator. The calculation be made accordingly and the applicant shall deposit the said amount of interest with the official liquidator and on deposit of the said amount of interest, the possession of the property would be handed over as well as the sale deed would be executed in his favour. The amount of interest so deposited by the applicant would be refunded to respondent No. 2 along with the amount of Rs. 1.27 lakhs.

17. As soon as this transaction is over and sale deed is executed and possession is handed over, the official liquidator shall file compliance report before the court. Subject to the aforesaid direction and observation, this application is accordingly allowed.

18. At this stage, Mr. A.S. Asthawadi, learned advocate appearing for respondent No. 2 has prayed for stay against the execution and implementation of this order as he wants to approach higher forum. Looking to the facts and circumstances of the case and considering the fact that during the pendency of this application, the official liquidator was directed not to part with the possession, the possession of the property of the company in liquidation should not be handed over to the applicant nor the sale deed be executed in its favour up to December 5, 2007.

