
(2003) 09 MP CK 0021
In the Madhya Pradesh High Court
Case No : Co. Petition No. 3 of 2001

Sul India Limited

APPELLANT

Vs

Bank of India

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Citation : (2004) 2 BC 432

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : A. Shukla, O.L., D.D. Vyas, A.A.G, for the Appellant; P.B.S. Nair, for the Respondent

Judgement

1. The report of O.L. (O.L.R. No. 21) perused.
2. The question that arises for consideration is whether a bid received for Rs. 2,66,00,000/- for the sale of the assets of the company in liquidation deserves to be accepted by according sanction by this Court.
3. In this connection, I may refer to on the previous two orders passed by this Court on this very issue and in particular order, dated 24.6.2003 and 8.8.2003. These two orders in detail takes into account all facts and circumstances appearing in the case. I, therefore, need not repeat the entire background of the case in this order once the same is detailed in the previous orders.
4. It is not in dispute as it is now a matter of record that extensive advertisement/ publicity was given as directed by this Court on the previous dates of hearing in all over India papers not only once but twice. It is also not in dispute that on the earlier occasion when the sale of property was conducted by the commercial tax department in respect of the property of the Company in liquidation which was under attachment with the department, the highest bid for the property was received at Rs. 1,15,00,000/- whereas when this time the property was put to re-bid pursuant to fresh readvertisement, the highest bid is received for Rs. 2,66,00,000/-. It is thus, higher by almost 130% of the earlier

one. In other words, the gain is of Rs. 1,15,00,000/- as compared to the earlier bid of Rs. 1,15,00,000/-. It is, thus, undoubtedly a substantial gain for the company which is in liquidation.

5. The sale committee which this Court has appointed mostly consists of secured creditors who are reputed financial institutions of country. This Court had given time to all the creditors to find out better buyer even after receipt of highest bid. On the last date of hearing, all the creditors reported through their Counsel that they are unable to get any other better buyer than the one already received i.e. for Rs. 2,66,00,000/-, and that they will have no objection if the same is accepted for according sanction by this Court.

6. In somewhat similar circumstances, the issue was examined by the Supreme Court in one of the leading cases reported in *Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others*, . After examining the facts of the case involved therein, the question arose before Their Lordships as to whether and in what circumstances, the sale conducted by the Court should be accepted. Their Lordships ruled:--

"Para 7--Certain salient facts may be highlighted in this contexts. A Court sale is a forced sale and, notwithstanding the competitive elements of a public auction, the best price is not often forthcoming. The Judge must make a certain margin for this factor. A valuer's report, good as a basis, is not as good as an actual offer and variations within limits between such an estimate, however careful, and real bids by seasoned businessmen before the auctioneer are quite on the cards. More so, when the subject-matter is a specialised industrial plant, which has been out of commission for a few years, as in this case, and buyers, for cash are bound to be limited. The brooding fear of something out of the imported machinery going out of gear, the vague apprehensions of possible claims by the Dena Bank which had a huge claims and was not a party, and the litigious sequel at the judgment-debtor's instance, have scare value in inhibiting intending buyers from coming forward with the best offers. Businessmen make uncanny calculations before striking a bargain and that circumstance must enter the judicial verdict before deciding whether better price could be had by a postponement of the sale. Indeed, in the present case, the executing Court had admittedly declined to affirm the highest bids made on 16.5.1969, June 5, 1969 and August 28, 1969, its anxiety to secure a better price being the main reason. If Court sales are too frequently adjourned with a view to obtaining a still higher price it may prove a self defeating exercise, for industrialists will lose faith in the actual sale taking place and may not care to travel up to the place of auction being uncertain that the sale would at all go through. The judgment-debtor's plea for postponement in the expectation of a higher price in the future may strain the credibility of the Court sale itself and may yield diminishing returns as was proved in this very case."

The Court went on to rule in Para 9 :

"But it is not as if the Court should go on adjourning the sale till a good price is got, it being a notorious fact that Court sales and market prices are distant neighbours. Otherwise, decree-holders can never get the property of the debtor sold. Nor is it right to judge the unfairness of the price by hindsight wisdom. May be, subsequent events, not within the ken of the executing Court when holding the sale may prove that had the sale been adjourned a better price could have been had. What is expected of the judge is not to be a prophet but a pragmatist and merely to make a realistic appraisal of the factors, and, if satisfied that, in the given circumstances, the bid is acceptable, conclude the sale. The Court may consider the fair value of the property, the generaleconomic trends, the large sum required to be produced by the bidder, the formation of a syndicate, the futility of postponements and the possibility of litigation, and several other factors dependent on the facts of each case. Once that is done, the matter ends there. No speaking order is called for and no meticulous post-mortem is proper. If the Court has fairly, even if silently, applied its mind to the relevant considerations before it while accepting the final bid, no probe in retrospect is permissible. Otherwise, a new threat to certainty of Court sales will be introduced."

7. It is in the light of what the Supreme Court has laid down in the aforementioned case and keeping in view the facts emerging from the record of the case, I am of the view that the bid for Rs. 2,66,00,000/- deserves to be accepted when despite extensive publicity given, the highest offer could reach upto Rs. 2,66,00,000/-, when several tenderers participated and negotiated for price before the sale committee, when the present bid is more than the double amount as compared to the first bid (earlier one was for Rs. 1,15,00,000/-), when creditors too have consented for acceptance than taking into account all these factors, the bid of Rs. 2,66,00,000/- can be accepted for giving sanction. It will be in the interest of all those dealing with the company.

8. In view of this, and taking into account all facts and circumstances of the case, emerging from the record of the case, I record sanction to the highest bid furnished by M/s. Raj Enterprises, 23-B Sector-B, Sanwer Road, Indore for Rs. 2,66,00,000/- as disclosed by O.L. in his report dated 5.8.2003 in prayer Clause No. (i). The O.L. is directed to receive a sum of Rs. 2,66,00,000/- from the successful bidder as referred above only by demand draft or Banker's Cheque. It is only on receipt of the entire bid amount i.e. Rs. 2,66,00,000/- the O.L. shall deliver the assets actually sold. The details of the assets sold be prepared and necessary documentation be done at the cost of purchaser. Let these formalities be done within one month.

C.C. within three days.