
(2013) 10 P&H CK 0354
In the Punjab And Haryana At Chandigarh
Case No : CAPP. No. 28 of 2013 (O and M)

Surinder Singh Manchanda

APPELLANT

Vs

Chairman cum Managing Director, IFCI and Another

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0354

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Augustine George Masih, J

Bench : Division Bench

Advocate : Kanwaljit Singh and Mr. Ajaivir Singh, for the Appellant;

Judgement

Sanjay Kishan Kaul, C.J.

CM-82-2013 (Condonation of delay in filing of 86 days) & Main Appeal:

1. The appellant, the original auction purchaser, seeks to assail the order dated 25.4.2013 after a delay of 86 days. The only ground given for seeking condonation of such an inordinate delay is that the benefit which had to accrue to the appellant under the impugned order had not been paid and, thus, appeal was not preferred. This can hardly be a reason to condone the delay as the appellant knew that what is sought to be agitated in the present appeal was not coming to the appellant in terms of the impugned order. Thus, there is no sufficient cause to condone the delay. Be that as it may, we have also heard learned counsel for the appellant on merits.

2. The undisputed facts are that in terms of the auction, the appellant deposited the sum of Rs. 1 crore and was required to deposit further Rs. 4.5 crores by 5.5.2010 against the total bid of Rs. 22 crores. This was against the backdrop of the auction held by the Company Court on 10.2.2010 when the assets of M/s. Arihant Cotsyn Limited were auctioned and the highest bid received was of M/s. JTL Infra Limited of Rs. 14.21 crores. It is at the stage of confirmation of the bid that the appellant sought to put in a bid of more than Rs. 14.21 crores and an inter se bid was held on 11.3.2010 in which the appellant gave a bid of Rs. 22

crores. However, the appellant failed to deposit the amount of Rs. 4.5 crores but instead deposited a sum of Rs. 2 crores on 6.5.2010 with undertaking to deposit the balance Rs. 2.5 crores on or before 17.5.2010. This request of the appellant was accepted in view of the positive approach adopted by the secured creditors and the Official Liquidator subject to the condition "that any future default may entail forfeiture of the amount of Rs. 2 crores deposited today." The appellant once again failed to deposit the amount and, thus, the Court directed forfeiture of Rs. 1 crore with a further direction to have a fresh auction. Despite the request of the appellant, no further extension of time was agreed to by the secured creditors.

3. In terms of the impugned order, the question, which was examined, was whether the whole amount deposited by the appellant was liable to be forfeited and if not then to what extent. This was in the context of some further amount deposited by the appellant in the course of persuading the secured creditors to abide by the original bid totalling to Rs. 4,75,50,000/-. The learned Company Judge has opined by taking into consideration all the factors into account that the appellant must pay the following amounts:

(i) interest @ 10% per annum as per the terms and conditions of the Sale Notice for the period from 10.2.2010 to 15.9.2010 on the amount of Rs. 16.10 crores which was treated as the market price when the bid of Rs. 14.21 crores was superseded by the appellant with higher bid of Rs. 22 crores;

(ii) the expenses incurred by the secured creditors on the second sale process amounting to Rs. 15,00,582/-;

(iii) interest on the expenses @10% per annum with effect from 10.2.2010 to 15.9.2010;

(iv) forfeiture of the sum of Rs. 1 crore as provided in the terms of auction; and

(v) costs of the proceedings quantified at Rs. 5 lacs.

4. Learned senior counsel for the appellant, on instructions, states that this whole amount would come approximately to Rs. 1.25 crores.

5. We may notice that this very order was assailed by the IFCI before us which wanted the forfeiture of the whole deposit made by the appellant or at least some more amount. However, we negated the challenge in CAPP No. 18 of 2013, decided on 3.7.2013.

6. Learned senior counsel for the appellant, however, contends that this negation would only apply to the appeal filed by the IFCI Limited to the extent it sought to increase the burden on the appellant and cannot prejudice the rights of the appellant to agitate its claim for reduction of the amount.

7. If we analyse the impugned judgment as per the submissions of learned senior counsel for the appellant, we find that as far as forfeiture of Rs. 1 crore is concerned, that was a part of the auction terms itself and arose as a sequitur to

the failure of the appellant to deposit the balance amount. The learned single Judge is right in stating that the whole auction process was delayed by the appellant by first seeking to enhance the bid as in the court auction the highest bid made by the appellant was Rs. 22 crores. The next bid to the appellant, the original bidder M/s. JTL Infra Limited, would also have bid over Rs. 14.21 crores and, thus, their bid would have been a little below the bid of the appellant, i.e., it would be just below the bid of Rs. 22 crores. Thus, in that bidding process, if the appellant had not gone beyond its means, possibly, the bid of M/s. JTL Infra Limited would have reached the value of little below of Rs. 22 crores. That did not happen and the appellant subsequently defaulted.

8. Not only that even when the appellant sought extension of time even to deposit the second instalment of Rs. 4.5 crores, the same was granted with a clear stipulation that Rs. 2 crores deposited would be forfeited in case the appellant committed any further default. Undisputedly, further defaults arose. Thus, the forfeiture of Rs. 2 crores was also very much permissible.

9. The learned Company Judge, however, took into consideration the fact that in the second auction the properties had been sold for Rs. 16.10 crores as against the initial bid of M/s. JTL Infra Limited of Rs. 14.21 crores and, thus, apart from the forfeiture of initial deposit of Rs. 1 crore, the only burden on the appellant is interest on the amount for the period of delay up to the second auction, cost of second auction, interest on cost of second auction and cost of proceedings. This amount approximately of Rs. 1.25 crores is far below the minimum forfeiture which the appellant would have faced of Rs. 1 crore plus Rs. 2 crores if what was term of the extension granted to the appellant for making the payment was strictly complied with.

10. We are, thus, of the view that the impugned judgment can neither be categorized as unjust or unfair or imposing too much of a burden on the appellant. It is, in fact, as per the terms and conditions of the auction read with the orders passed while granting extension to the appellant and is, in fact, reducing the figure to make it more reasonable for the appellant.

11. We are, thus, not inclined to interfere with the impugned order even on merits. Dismissed.