
(2000) 01 CAL CK 0053

In the Calcutta High Court

Case No : A.P.O.T. No. 510 and A.C.O. No. 84 of 2000

Usha Atlus and Hydraulic Equipment Ltd. (In Liqun.)

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 03-01-2000

Acts Referred:

Citation : (2001) 1 ILR (Cal) 274

Hon'ble Judges : Tarun Kumar Chatterjee, J;Amitava Lala, J

Bench : Division Bench

Advocate : Saha and Gopal Chandra Mukherjee, for the Appellant;Amito Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Tarun Kumar Chatterjee, J.—This is an appeal file against an order dated March 3, 2000, passed by learned Judge of this Court in C.P. No. 422 of 19(sic) whereby the sale of Usha Hydraulic Equipment ((sic) Liquidation) was confirmed and the highest offer of the Respondent No. 2 M/s. Well Worth Vanijya Pvt. Ltd. to the tune of Rs. 1.51 crore. was accepted.

2. the Appellant is one of the promoter directors (sic) Usha Atlas Hydraulic Equipment Ltd. (In Liquidation) (herein after referred to as the "company in liquidation" By an order dated April 4, 1991, this Court passed an order directing the Company (In Liquidation) to be wound up. The company (In Liquidation) against the order of winding up came up in appeal in which the order of the Trial Court dated April 4, 1991, was affirmed by Division Bench of this Court and finally the liquidat(sic) being Respondent No. 1 in this appeal was directed (sic) take steps to sell in accordance with the order date April 4, 1991. Subsequently, steps were taken by the Official Liquidator to sell the company (In liquidation pursuant to an order passed by this Court on September 10, 1991. In the notice of sale, it was mentioned that tenders were invited in a sealed cover enclosing a Bank(sic) draft/pay order, in favour of Official Liquidator, High Court, Calcutta for an amount equivalent to 25% of the offered amount as earnest money for sale of

two unit the company (In liquidation). The Unit No. 1 situated in the jurisdiction of Maheshtala Police Station, (sic)jbaj Tank Road, 24 Parganas (South) for sale of land imprises an area of about 2.352 acres including building structure, plants and machinery, furniture and things, stock and raw materials finished and semi-finished goods etc. of the company (In liquidation) and the Unit No. 2 situated at Dutkhali P.S. Maheshtala, (sic)jbaj Tank Road, Dist. 24 Parganas (South) comprising the land measuring about 833 acres together with building, plants and machinery stores, stocks, raw materials finished and semi finished goods etc. as a going concern absorbing the employees of the company (In (sic)uidation) and on "as is whereas basis". From this notice for sale, it appears that no reserve price was (sic)ed for sale of the company (In liquidation). Advertise(sic)nts were given in daily newspapers for sale of assets (sic) the company (In liquidation) five times. Finally on February 13, 2000, the matter was placed for confiration of sale before Ronojit Kumar Mitra, J. who ad(sic)rned the matter in order to give a further chance to the Banks being the secured creditors to bring any higher offer than that of the offer made by the highest (sic) erer M/s. Well Worth Vanijya Pvt. Ltd. Pursuant to the presaid direction made by Ronojit Kumar Mitra, J. the (sic) icial liquidator gave notice to the secured creditors to (sic) ing higher offer than that of M/s. Well Worth Vanijya Pvt. Ltd. It is true as appears from the impugned order, at no higher offerer could be brought by the secured editors. Finally by the impugned judgment the offer of (sic). Well Worth Vanijya Pvt. Ltd. beings Respondent No. 2 this appeal to the tune of Rs. 1.51 crores was accep-(sic)d as the highest bidder and the sale was confirmed. (sic) wever, form the impugned order, it appears that the (sic) ial Court before confirming the sale gave an portunity to some of the intending purchasers viz. (i) okar Viniyog Pvt. Ltd. (ii) Maruti Real Estate Pvt. Ltd. purchase the company (in liquidation) by offering a higher offer than of M/s. Well Worth Company Pvt. Ltd From the order under appeal, it also appears that the Maruti Real Estate Pvt. Ltd. gave an offer to the turist of Rs. 1.25 crores and Upkar Viniyog Pvt. Ltd. had give an offer to the tune of Rs. 1.31 crores. It also appeal from the record that the. present highest offerer Mr. Well Worth Vanijya Pvt. Ltd. initially offered Rs. 1.31 crores which was the highest at that point of time b(sic) on the date the sale was confirmed by the learned Trial Judge, M/s. Wess Worth Vanijya Pvt. Ltd., howeved gave an offer to the tone of Rs. 1.51 crores which well more than 20 lacs from its initial offer. The learned Trial Judge after finding that there was no other offerer well could pay more than 1.51 crores confirmed the sale favour of M/s. Well Worth Vanijya Pvt. Ltd. Against the order, confirming the sale of the company (In-liquidation) in favour of M/s. Well Worth Vanijya Pvt. Ltd

3. M/s. Maturi Real Estate pvt. Ltd., who was one the intending purchasers filed an appeal and the presend appeal has been filed by one of the Directors of the Company (In liquidation) which were taken up f (sic) hearing by us. It also appears that against the self san(sic) order the other offerer Upkar Viniyog Pvt. Ltd. had also -filed an appeal. In the appeal filed by Upkar Viniyog Pvt Ltd. and by Maruti Real Estate Pvt. Ltd., an application was moved before a Division Bench

of this Court f(sic) certain directions on which a Division Bench consistirat of Shyamal Kr. Sen and D.P. Kundu, JJ. appointed (sic) Srinivashan.and another learned advocate of this Court to prepare an inventory of the assets of the company (In-liquidation) and file the same in Court on or before April 17, 2000. Be it recorded at this stage that before the Division Bench comprising Shyamal Kr. Sen and D.P Kundu, JJ. M/s. Well Worth Vanijya Pvt. Ltd., the Respondent No. 2 submitted through their learned advocate that they were no longer interested to remance in possession of the company (In liquidation) and (sic) the company (In liquidation) as a going concern in view of the pending litigations. Before as proceed further, we may state at this stage that the Official Liquidator had prepared an inventory of the assets of the company (In liquidation) lying at its factory premises and filed the said report in Court on February 10,1997 with a valuer's report. Be it mentioned herein above, by the impugned order, the Official Liquidator was directed to hand over possession of the company (In liquidation) to the highest offerer M/s. Well Worth Vanijya Pvt. Ltd. including all its assets forthwith. On the date the sale was confirmed, M/s. Well Worth Vanijya Pvt. Ltd. deposited the amount fixed by the Trial Court with the Official Liquidator and in turn the Official Liquidator handed over possession of the company (In liquidation) to M/s. Well Worth Vanijya Pvt. Ltd.

4. It has been brought to our notice that the appeal filed by Upkar Viniyog Pvt. Ltd., as noted herein earlier, has been dismissed by this Court subsequently. From the facts discussed herein above, we find that an inventory report is also on record of this appeal and the inventory report with vatber's report is also on record which were filed by the original liquidator in the Trial Court.

5. Before us, on behalf of the Appellant, Mr. Saha first contended that the report of the valuer could not at all be accepted by the Trial Court as it would be evident from the report of the valuer that the valuer could not value the drawings that were found in the factory premises which were extremely valuable and expensive. Mr. Saha contended that as the valuation of about six thousand drawings and designs and technical support by way of documentation in respect thereof were extremely valuable properties of the company. (In liquidation) which cannot bevalued less than 2 crores, the valuer's report could not be accepted before valuing these documents. It was further contended that if the valuer's report and the report filed by the Special Officer are taken into consideration together, it would be found that the valuation of the drawings, sketches, of different sizes were not as ascertained either by the valuer or by the special officer as the valuation of such documents could not be ascertained without getting technical assistance. Mr. Saha had also drawn our attention to the report of the valger to show that some of the almirahs could not even be opened by the valuer due to locking of the same in which some valuables were kept. Therefore, Mr. Saha contended that the valuer report filed by the Official Liquidator under the aforesaid circumstances could not be accepted. Various other grounds were taken against the acceptance of the valuer's report and, therefore, according to Mr. Saha, the learned Trial Judge, before accepting the

amount offered by M/s. Well Worth Vanijya Pvt. Ltd. ought to have gone into the question whether the valuer's report could be accepted when admittedly discrepancies of high nature were found from the report. In support of this contention, Mr. Saha relied on a decision of the Supreme Court in the case of Allahabad Bank etc. etc. Vs. Bengal Paper Mills Co. Ltd. and Others, (per Bhargava, J.) and contended that in view of the above decision of the Supreme Court and in view of the fact that the valuer's report ought not to have been accepted by the Trial Court, for the reasons aforesaid, the order confirming the sale cannot be sustained in law. Mr. Saha also, relying on the same decision of the Supreme Court as noted herein before, urged before us that without serving the valuer's report to the secured creditors and without fixing the reserved price for sale, the learned Trial Judge erred in confirming the sale, it was also contended by Mr. Saha that it was the duty of the Court, before confirming the sale to satisfy itself that having regard to the market value of the property of the company (In liquidation), the price offered by M/s. Well Worth vanijya Pvt. Ltd. was reasonable adequate price or not. He further contended that unless the Court was satisfied about the adequacy of the price, the act of confirming the sale could not be a proper exercise of judicial discretion. In support of this contention, Mr. Saha appearing on behalf of the Appellant relied on a decision of the Supreme Court in the case of Nabalakha and Sons v. Ramanuja Das 40 C.C. 935. Relying on the aforesaid decision of the Supreme Court, Mr. Saha, therefore, contended that the learned Trial Judge was not justified in confirming the sale of the company (In liquidation) only on a finding that as five times advertisements were made for sale of the company (In liquidation) and no offerer was available to offer more than the amount already offered by the Respondent No. 2. M/s. Well Worth Vanijya Pvt. Ltd. the sale must be confirmed. Accordingly, he argued that the impugned judgment under appeal should be set aside and the matter should be sent back to the Trial Court for confirmation of the sale of the company (In liquidation) after taking all steps in accordance with law. Mr. Caopal Chandra Mukerjee, appearing on behalf of the U.T. Ltd., Respondent No. 6 supported the Appellant and accepted the submission of Mr. Saha as noted herein earlier. In addition to such submissions, Mr. Mukherjee contended that U.T. Ltd. being a secured creditor was entitled to a notice regarding the sale of the company (In liquidation) and since such notice was not admittedly given to U.T. Ltd. not only the value's report on the basis of which the sale of the company (In liquidation) was confirmed, must be rejected and the order confirming sale must also be set aside. In this connection, Mr. Mukerjee had drawn our attention to an order passed by a Division Bench of this Court on October 3, 1996, (Ramesh Bajendra Kumar v. Official Liquidator and Ors.) by which the Division Bench directed the winding up of the company. From the said order, Mr. Mukherjee pointed out that U.T. Ltd. duly represented by the learned lawyer in the proceeding for winding up of the company (In liquidation) as a secured creditor. Therefore, it cannot be said that U.T. Ltd. was not entitled to a notice before the sale was confirmed. Mr. Mukherjee in addition to the submission of Mr. Saha regarding the disclosure of the valuation report to the

secured creditors and others relied on a decision of the supreme Court in the case of Allahabad Bank v. Bengal Paper Mills Ltd. and Ors.(supra) and argued that in view of the admitted fact in this case that the valuation report was not disclosed to any of the secured creditors of the company due to non service of the valuation report, there was no opportunity for the secured creditors and others to file any objection to valuation report, and in view of the fact that the order of the trial Judge did not speak that the offer of the Respondent No. 2. M/s. Well Worth Vanijya Pvt. Ltd. was a fair and adequate price the valuation on which the sale was confirmed in favour of the Respondent No. 2 must be held to be a suspect one. In any view of the matter, Mr. Mukherjee contended that since the valuation report was not served and/or disclosed before the sale was confirmed, it was not open to the learned Trial Judge to confirm the sale only on the ground that as five times advertisements were made to sell the company (In liquidation) and no better offer was received by the Official Liquidator or the Court to sell the same then the offer of the Respondent No. 2 M/s. Well Worth Vanijya Pvt. Ltd. must be confirmed. Lastly, Mr. Mukerjee argued that on a perusal of the sale notice, it would be evident that no reserve price was indicated in the sale notice and in view of the decision of the Supreme Court as mentioned herein above, the order confirming the sale must be set aside. The learned advocate, appearing for the Canara Bank, Respondent No. 3, U. Go. Bank, Respondent No. 5 submitted that the Respondent Nos. 3 and 5 would have no objection if the order confirming the sale is set aside and steps are taken in accordance with law for sale of the company (In liquidation) as expeditiously as possible and also to ensure that if fresh advertisement is made, the reserve price for sale of the same cannot be fixed less than 1 crores 51 lakhs which was offered by the Respondent No. 2 and accepted by the Trial Court. Other Respondents namely, the other secured creditors viz. Syndicate Bank supported the Appellant, the learned Counsel for them contended before us that the order confirming the sale must be set aside following the submissions made by Mr. Saha and Mr. Mukherjee as noted earlier.

6. Mr Amitesh Banerjee, appearing on behalf of the Respondent No. 2 M/s. Well Worth Vanijya Private Limited submitted that the Trial Court has not acted illegally in the matter of confirming the sale of the company (In liquidation) on the offer made by the Respondent No. 2, Mr. Banerjee, however, had drawn our attention to an order passed in the present proceeding passed on February 18, 2000, by a learned Judge of this Court and after relying on the said order of the learned Judge, Mr. Banerjee submitted that several opportunities were given to all the secured creditors and others to bring offer at a rate higher than the rate offered by the Respondent No. 2 and on that ground the matter was adjourned from time to time but none could produce any better offer than the Respondent No. 2. Therefore, the Trial Court was fully justified in accepting the valuation report and in passing the order confirming the sale, Mr. Banerjee appearing for the purchaser, Respondent No. 2 after taking instruction submitted before us that in the event the sale is set aside, in that case, the Official Liquidator may be

directed to refund the money that has been deposited by them on the date of delivery of possession to them with interest accrued thereon to the Respondent No. 2 and the possession of the assets which were taken by them would be delivered to the Official Liquidator as soon as the said amount is received by them.

7. After having heard the learned Counsel for the parties and after going through the materials on record and the pronouncement of the decisions of the Supreme Court on the question in hand, as noted herein earlier, we are not in a position to accept the order confirming the sale. Reasons are as follows:

8. It is an admitted position that the valuer's report that was submitted by the Official Liquidator was not disclosed to the secured creditors before the sale was confirmed. All the learned advocates, appearing for the secured creditors submitted that no such disclosure of valuer report was made to them and in that view of the matter, no objection could be raised by them against such valuation report. In the case of *Union Bank of India v. Official Liquidator*, High Court, Calcutta and Ors. J.T. 2000 (7) S.C. 86 it has been held by the Supreme Court that in proceedings for winding up of the company under liquidation, the Court acts as custodian for the interest of the company and the creditors. Therefore, before sanctioning the sale of assets, the Court is required to exercise judicial discretion to see that properties are sold at a reasonably adequate price. For deciding what would be the reasonable price, valuation report of an expert is a must. Not only that it is the duty of the Court to disclose the said valuation report to the secured creditors and other interested persons including the offerers. Further, it is the duty of the Court to apply its mind to the valuer's report for verifying the reasonable market value of the property to be auctioned even if objections are not raised. In para. 13 of the aforesaid decision of the Supreme Court on the question of disclosure of valuer report, it observed as follows:

Further in the present case, it is admitted that valuation report was called for by order dated 16th February, 1996; once the report was called for, it was the duty of the Court to see that copy of the said report is given to the secured creditors and other affected persons. It was known to the Court that the Appellant secured creditor was claiming more than Rs. 4 crores from the company. It appears that valuation report was kept as a secret, confidential document. After winding up order, the properties of the company are in the custody of the Court for the benefit of the secured creditors and its shareholders. In the present case, without disclosing the valuation report to the creditors and without fixing its reserve price, the properties were auctioned and the sale was confirmed. This approach is unjustifiable by any judicial standard and is against the normal procedure for auctioning the immovable property of the company which is to be wound up.

9. On the question of fixing the reserve price for sale in the sale notice and the valuer report not disclosed to the secured creditors the Supreme Court in the

case of Allahabad Bank v. Bengal Paper Mills Ltd.(supra) Bharucha J. in para. 13 observed as follows:

It is to be noted that no reserve price for the sale was fixed; Why this should have been so is not understood, particularly having regard to the fact that a Valuer had been appointed of the assets and properties and a report obtained. The valuation report was not disclosed. The order of the learned single Judge does not set out what the valuation of the property that was sold was. It does not even state that, in view of that valuation, the offer of Rs. 2 crores made by the second Respondent was a fair and adequate price. Further, the learned single Judge did not notice what the Division Bench did namely:

The company had 15.2.73 acres of leasehold land. This was not taken into consideration by the valuer on the ground that the lease period was only up to 14th October, 1992. The valuer has not indicated whether he had examined the lease or what or there was any renewal clause in the lease agreement.

The valuation was, therefore, itself suspect.

10. From the aforesaid two decisions of the Supreme Court, it is pellucid that the sale cannot be confirmed by the court without fixing the reserve price for sale of the company and without disclosing the valuation report to the secured creditors and other interested and affected persons in order to raise any objection if there be any to the valuation report. One has to remember that in the matter of sale by Court, it is the duty of the Court to ensure that the best possible price is procured from where they could recover at least some part of their dues. It is equally well settled now that the interest of the creditors of the company must be taken to be of par-amount importance as the obligation of the Court was to the interest of the creditors of the company. Therefore, keeping this in mind that in the case of a sale of a company by the Court, the Court is to be satisfied before confirming the sale whether the price on which" the company is sold was adequate and reasonable or not we are of the view that the learned Trial Judge ought to have gone into this aspect of these matters before confirming the same only on the ground that as five times advertisements were made and no higher offerer could be brought, the sale must be confirmed. In the case of Nalaksha v. Ramanuja Das(supra) the Supreme Court in clear terms laid down the principle that should govern confirmation of sale to be conducted in a proceeding for winding up. In that decision of the Supreme Court, it was laid down that where the acceptance of the offered was subject to confirmation of the Court, the offered did not by mere acceptance of the offer got any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at an inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case, it is the duty of the Court to satisfy itself that having regard to the market value of the property, the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price, the act of confirmation of the sale would not be a proper exercise of

judicial discretion. Therefore, applying the principles laid down by the Supreme Court in the above decision and after considering the judgment under appeal, as find that the learned Trial Judge was not justified in confirming the sale only on the basis of a finding that as five times advertisements were made for sale of the company in liquidation, the offer of the Respondent No. 2 must be accepted and accordingly, the sale must be confirmed. It must be recalled also that the sum of 1 crores 5 lakhs could not be accepted by the Trial Court when more than 6 crores were the dues of the secured creditors and large properties of the company were being sold at a very low price of 1.51 crores.

11. There is another aspect to the matter. From the judgment under appeal by which the sale was confirmed, it would appear that initially the Respondent No. 2 gave an offer to the tune of Rs. 1.30 corers only but when the matter was placed for confirmation of sale in favour of Respondent No. 2, some other purchasers were permitted to offer by which one of the intending purchaser namely Upkar Viniyog Pvt. Ltd. gave an offer to the tune of Rs. 1.31 crores. As soon as the Respondent No. 2 found that the said purchaser had given an offer to the tune of Rs. 1.31 crores which was 1 lakh more than the offer initially given by the Respondent No. 2, immediately the Respondent No. 2 gave an offer to the tune of Rs. 1.51 crores. Considering this aspect of the matter, we are also of the view that the learned Trial Judge before the offer of the Respondent No. 2 was accepted, ought to have taken into consideration as to whether such an offer made on the spot could be accepted by him or would direct further advertisement of the sale of the company in liquidation. For the fore-going reasons, we are of the view that neither the Valuation report not the order confirming the sale could be accepted by us. Therefore, we set aside the order of the Trial Court and hold that in the circumstances stated above the learned Company Judge ought not to have confirmed the sale in favour of M/s. Well Worth Vanijya Pvt. Ltd. Accordingly, we set aside the order of the learned Company Judge, confirming the sale of the company in liquidation and, there should be a fresh sale of the properties and/or assets of the said company by calling sealed tenders or by auction in accordance with law. The tender will be called or the auction will take place with a reserve price of Rs. 1.51 crores. We make it clear that the learned Company Judge shall ask for a fresh valuation report in respect of the company (In liquidation) and before confirming the sale the said valuation report must, be considered along with valuation report already submitted by the Official Liquidator.

12. For the reasons aforesaid, we hold that the judgment of the Trial Court should be set aside and accordingly, it is set aside. The matter is remitted back to the Trial Court for sale of the company in liquidation in accordance with law. The appeal is, therefore, allowed to the extent indicated above.

13. To complete this judgment, it is necessary to consider the prayer of Mr. Banerjee, appearing for the highest offerer M/s. Well Worth Vanijya Pvt. Ltd. Mr. Banerjee on instruction submitted before us that if the sale is set aside and the

matter is remitted back to the Trial Court, in that event, the amount already paid and/or deposited with the Official Liquidator must be refunded to them with interest. Since we have already set aside the order confirming the sale of the company in liquidation, and as we have directed that the assets and properties covered by the said sale shall be resold after a fresh valuation report there of is obtained, a reserve price fixed and due advertisements published. The Respondent No. 2 shall be repaid the price of 1.5 crores by the Official Liquidator subsequent to the recovery of possession as aforesaid. In the case of Allahabad Bank v. Bengal Paper Mills Ltd.(supra) the Supreme Court under the similar circumstances directed the Official Liquidator to repay the highest bidder without any direction for payment of interest. We also direct the Official Liquidator to refund the amount. But it will be open to the Highest bidder M/s. Well Worth Vanijya Pvt. Ltd. to apply to the Trial Court and satisfy it that the Respondent No. 2 was entitled to interest as in law, the Respondent No. 2 is entitled to recover it.

14. Accordingly, the appeal is allowed to the extent indicated above. There will be no order as to costs.

Amitava Lala, J.

15. I agree.