
(1980) 01 DEL CK 0009

In the Delhi High Court

Case No : Company Appeal No. 12 of 1979

Vijay Kumar Mundhra

APPELLANT

Vs

Globe Motors Ltd.

RESPONDENT

Date of Decision : 18-01-1980

Acts Referred:

Citation : (1980) 17 DLT 308

Hon'ble Judges : S.B. Wad, J;Prakash Narain, J

Bench : Division Bench

Advocate : O.L. Singhi, B. Kirpal and Madan Bhatia, for the Appellant;

Judgement

S.B. Wad, J.

(1) This appeal is directed against the order of the Company Judge dated May 2, 1979, directing the official liquidator to accept the bid of Star Wires (India) Ltd. for the sale of the Steel Division of Globe Motors Ltd.

(2) The appeal is by Shri V.K. Mundhra, who claims to be the largest shareholder and creditor of the Company. He is also the propounder of the scheme which failed to work satisfactorily resulting into the winding up order with regard to the Company being made on 15th of April 1979. Mr. G.L. Sanghi, Sr. Advocate, appearing for Mr. Mundhra has objected to the auction-sale. See Navalkha and Sons Vs. Ramanuja Das and Others, .

(I)that the steel unit should have been sold by public auction with wide publicity and not by limited auction, as was done by the Company Judge; (ii) that the limited auction has fetched less than the market price. The sale was, Therefore, contrary to the interest of the creditors and share-holders. (iii) that even otherwise, the auction sale was contrary to the procedure prescribed by Rule 2 73 of the Companies Court Rules, 1959. (iv) that the auction sale was had for the consulting the appellant (along with other creditors) and particularly because the appellant had a greater interest and heavier stakes, in the matter.

(3) The official Liquidator and the auction-purchaser strongly countered these submissions. It is submitted on their behalf that the Company Court had initially invited sealed tenders by advertising the same very widely. The highest tender was for Rs. 88,88,888.00 . Running a steel plant requires a special expertise and an experience in the field. Eight people filed in the tenders and deposited a sum of Rs. One Lac each. Mr. Mundhra did not fill in the tender. The learned Company Judge wanted to further explore whether the steel plant would fetch higher price and, Therefore, held prolonged consultations with the original tenderers and with the major creditors of the company. The learned Company Judge rightly resorted to further bidding amongst the said tenderers who along had shown interest in buying the plant. The final bid was made by the Star Wires India Ltd. for Rs. 1,55,55,555.55. This price was almost double of the highest price quoted by the tenderers. It is further submitted that the Company Judge followed this procedure in the interest of the Company and he was fully competent to do so under Rule 273 of the Companies (Court) Rules 1959. It is then submitted that during the relevant period, Mr. Mundhra was directed to be present before the Liquidator for proceedings u/s 477 but he absconded and the Company Court had to issue a non-bailable warrant against Mr. Mundhra. Mr. Mundhra was keeping in touch with. the auction proceedings through his friend and associate Mr. K.N. Aggarwal. Mr. Aggarwal had informed the Company Court that he had no customer for a higher price. It is submitted that, in these circumstances, Mr. Mundhra's complaint that he was not consulted or that the price was inadequate, has no substance.

(4) We might first clear the legal submissions of Mr. Sanghi regarding contravention of Rule 273 of the Companies Rules. The said Rule reads as follows:

"273: Procedure at sale ; Every sale shall be held by the official Liquidator or, if the Judge shall so direct by an agent or an auctioneer approved by the Court, and subject to such terms and conditions, if any, as may be approved by the Court. All the sales shall be made by public auction or by inviting sealed tenders or in such manner as the Judge may direct."

(5) A plain reading of the Rule makes it clear that the Company Judge who exercise continuous supervision over the winding up proceedings, has full discretion to choose any of the alternatives or combination of them in matters of sale. It is true that a public auction is more commonly adopted mode of selling the property. The principle advantage in public auction is that with wide publicity large number of prospective buyers participate. However, the rule in question permits other modes of sale depending on the circumstances of the case. In this case, the learned Company Judge invited sealed tenders by advertisement in six dailies. Steel plant is a very special type of commodity and cannot be compared with general commodities. If the goods are of normal consumption, such as goods in grocer's shop or cloth, or of similar variety, hundreds of dealers would be interested in the auction. Buying a steel plant with large investment in running it for profit, involves a different consideration. In the nature of things,

there would be a small number of buyers of such a commodity. Running of a steel plant involves high degree of technology, expertise and experience. Further, Globe Steel was indebted to the tune of Rs. 2.1/2 crores.

(6) In order to appreciate the submissions of the parties, some salient facts may now be noted. The facts leading up to the winding up order dated 15th of April 1979 and some subsequent events in the proceedings u/s 477 of the Companies Act, are stated in greater detail in the connected appeal. Company Appeal No. 6 of 1979. After the winding up order was passed, the official Liquidator submitted his report to the Company Court (P.L. No. 120 of 1978) on 31-7-1978. On this report, the learned Company Judge passed an order on September 17, 1978 directing the official Liquidator to public advertisement in newspapers not exceeding six. Accordingly, the sale of the steel unit was advertised in the newspapers and the tenders were called in sealed covers. It was also advertised that the prospective purchaser should send Demand Draft Along with the tender for Rs. One Lakh as earnest money. The tender was filled in by 8 parties. After opening of the tender, it was found that the highest tender was for Rs. 88,88,888.00. The learned Company Judge felt that the steel plant could fetch a higher price and, Therefore, called the tenderers Along with the principal creditors such as Haryana State Electricity Board, Haryana Financial Corporation, National & Grindlays Banks. The meeting was called to discuss and find out whether amongst original tenderers the auction can be held for getting a higher price. The discussions were held on 11-4-1979, 14-4-1979 and 16-4-1979. In the said discussions, the Court modified some of the original conditions of sale. Some new conditions which were more liberal and some were more stringent. Ultimately, the bid of one Mr. Ganpat Rai for Star Wires India Pvt. Ltd. was accepted, being the highest bid for Rs. 1,55,55,555.55. The highest bid was accepted by the Court by its order dated 2-5-1979.

(7) During this period, i.e. when the official Liquidator submitted his report for the sale of the steel plant and the actual sale of the steel plant Shri V.K. Mundhra, the appellant herein, was not traceable. The Company Court had already started the proceedings u/s 477 of the Companies Act where Mr. Mundhra was directed to be present before the official liquidator. As all normal channels of securing his attendance failed, nonbailable warrants were issued and he was finally arrested by the Police. On May 10, 1979, one Kailashnath Agarwal filed an application being C.A. No. 250 of 1979 objecting to the auction sale. Statement of Mr. Agarwal was recorded by the Court. In his statement, Mr. Agarwal stated that he had family dealings with Shri Mundhra's family and he was the creditor of the Company to the extent of Rs. 4 Lakhs. He further stated that Mr. Mundhra was in Calcutta and about two months back, i.e. in the month of March, Mr. Mundhra had come to Delhi. He further stated on 12-4-1979 that he was present in the court and his counsel Mr. G.L. Sanghi tried to address the Court, but for want of power of attorney, the counsel was not permitted to address the Court. He further stated that, although he was personally present, he did not object to the auction nor did he make any representation to the

Liquidator that the auction was invalid. He also admitted that he never suggested to the Court or to the official Liquidator that the price fetched at the auction was too low. He then stated that on 8th and 9th May, he had conversation with Mr. Mundhra, who was at Calcutta on telephone. He then stated that Mr. Mundhra told him that he should contact Mr. Mundhra's counsel in the High Court who were conducting the main appeal (G.A. No. 6 of 1979) before the Division Bench. He then went on to say that after his talk with Mr. Mundhra's Advocate in the said appeal, he realised that the original terms of auction were varied by the Court and had those terms been properly advertised, higher price could have been secured. He then stated that the market for steel had gone up very considerably in the last 2 to 3 years. He admitted that he had not consulted any expert regarding the value of the steel plant. Thereafter, the Court put a direct question asking whether Mr. Agarwal could get a customer for higher price. To that Mr. Agarwal replied that he had no customer. On a question from the Court, Mr. Agarwal told the Court that he was not ready to assist the police by accompanying them for the purpose of finding out where Mr. Mundhra was.

(8) The Company Court by its order dated May 10, 1979 put on record that the request was made to him on 12-4-1979 by Mr. Sanghi, Advocate, that auction should be stayed, that he was representing a person in Calcutta and that he was hoping to get a power of attorney. It is stated in the order that Mr. Sanghi also stated that he was being instructed by Mr. K.N. Agarwal, who was present in the Court. The learned Judge then noted that the submissions made by Shri K.N. Agarwal in the Court were absolutely incorrect.

(9) It may be noted that said Mr. K.N. Agarwal is a close associate of Mr. Mundhra. When Mr. Mundhra assured the Company Court that he will file an affidavit regarding the procurement of funds and was directed by the Court to do so, he asked several adjournments but did not file the promised affidavit at any time. However, on 18-1-1977, an affidavit was filed by Mr. K. N. Agarwal on behalf of Mr. Mundhra. He stated in the affidavit that he knew Mr. Mundhra very well and that he was present with Mr. Mundhra at Calcutta when the negotiations regarding the purchase of debentures with one Shri Gupta were going on. In the said affidavit, Mr. Agarwal further deposed regarding the illness of Mr. Mundhra and as to how he was unable to go to Delhi to file the necessary affidavit. Mr. Agarwal filed with his affidavit the original terms proposed by Mr. Gupta for the purchase of debentures in the Company.

(10) Coming now to the submission of the appellant, that the sale in question is contrary to the provisions of Rule 273(3) of the Company (Court) Rules, 1959, we find that there is no substance in the argument. The powers of the Liquidator in regard to the sale of the Company's property are laid down by Section 457 of the Companies Act and Rule 273 of the Companies Rules.

SECTION 457. Powers of Liquidator The Liquidator in a winding up by the Court shall have power with the sanction of the Court,- (e) The sale of immovable and movable property of actionable claims of the Company by public auction, or a

private contract with power to transfer the whole thereof, to any person, or body corporate or to said the same in parcels. Rule 273 : Procedure at sale Every sale shall be held by official liquidator or, if the Judge shall so direct by an agent or auctioneer approved by the Court, and subject to such terms and conditions, if any, as may be approved by the Court. All sales shall be made by public auction or by inviting sealed tenders or in such a manner as the Judge may so direct."

(11) The law relating to exercise of discretion in this matter is settled by series of decisions of the various High Courts. These decisions were noted by the Supreme Court in Navalkha and Sons Vs. Ramanuja Das and Others, . The Supreme Court has held :

" 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."

In exercise of its discretion, the Court can refuse to accept the higher bid at the auction if the Court finds that a still higher price can be secured.

(12) The plain reading of these provisions makes it clear that the court has full discretion while sanctioning the sale to permit the sale even by a private contract. The court can permit the sale by public auction or by inviting sealed tenders or by a private contract or combination of these modes of sale in such manner as the Court deems fit. The Supreme Court decision is no authority for the proposition that in all cases, the Liquidator must sell the property only by public auction.

(13) On facts also, the said Supreme Court decision is not applicable. In that case, there was a contemporaneous affidavit by the State Government regarding market price and a private offer on the date of the auction, which was higher than the one accepted by the Court. There was evidence to show that the price accepted by the court was not the market price. In the present case, neither the appellant or anybody else on his behalf has brought any evidence on the record to show that the price accepted by the Court was not reasonable or that it was not the market value. Mr. K.N. Agarwal, who was almost acting as a proxy for the appellant had told the Court that he had no buyer with a higher price. In this appeal, the appellant has made a vague allegation that the prices at the relevant time were rising. Even now, the appellant does not come out with any specific higher offer. It is a well settled principle of law that once the Court comes to the conclusion that the price offered is adequate no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale of offer already received : S. Soundararajan and Others Vs. Khaka Mahomed Ismail Saheb of Messrs. Roshan and Co., .

(14) We, thus, hold that the learned Company Judge had properly exercised the discretion. The price of the steel plant secured by him is reasonable and adequate and is in the interest of the company and the creditors. We, Therefore, dismiss the appeal with costs.

(15) We further direct that the auction sale be confirmed on the terms and conditions fixed by the learned Company Judge with the following modifications.

(16) The Installments that were payable by the auction purchaser on 9th June 1979 and 9th July 1979 will now be paid, as undertaken by the auction purchaser before us on May 24, 1979 within one week from today. The bank guarantee postulated by clause 12 of the learned Company Judge's order, covering the balance of the 50% of the purchase price may be submitted by the auction purchaser within two weeks from today. The remaining Installments as ordered by the learned Company Judge will be payable within each succeeding period of 30 days. The first of the remaining Installments will be paid within 5 weeks from today. The 6th and the last Installment of 10% amount will be paid within 30 days from the day when the 5th Installment is payable as ordered by us. The auction purchaser will be bound by the terms of the sale settled by the Company Judge with these modifications, which are already accepted by the auction purchaser.

(17) This order will also dispose of C.M. 851 of 1979 filed by the auction purchaser. The parties are at liberty to move the learned Company Judge, if any modifications or changes are sought by the parties in regard to the directions in disposing of C.M. 851 of 1979.