
(2009) 03 DEL CK 0129
In the Delhi High Court
Case No : EX No. 200 of 2002

Walchandnagar Industries Ltd.

APPELLANT

Vs

Cement Corporation of India Ltd.

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Citation : (2009) 03 DEL CK 0129

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : A.S. Chandhiok, Sweta Kakkad and Dimple, for the Appellant;
Sanjay Jain Sanjiv Ralli and Sarfaraz Ahmed, for the Respondent

Judgement

Manmohan Singh, J.—This execution has been filed by the Decree Holder against the Judgment Debtor for executing the money decree dated 16th May, 2002 arising out of Suit No. 1519A/1995 by modifying the award dated 26.4.1995. The Award was made rule of the Court vide order dated 16.5.2002 wherein the court directed the Judgment Debtor to pay an amount of Rs. 5,53,32,728/- alongwith interest @ 12% p.a. w.e.f. 3.1.1989 till the date of realization.

2. When this execution petition came up for hearing before the court on 9.4.2008, the learned Counsel for the Judgment Debtor had admitted its liability to be paid to the Decree Holder to the tune of Rs. 11,02,94,044.54/- against a sum of Rs. 14,77,12,898.15/-.

3. The Decree Holder after obtaining the instructions and without prejudice to the rights of either of the party has accepted the proposal of the Judgment Debtor who was directed to pay the Decree Holder the aforesaid admitted amount of Rs. 11,02,95,044.54/- leaving the issue of remaining amount payable. The matter was thereafter put up for hearing on 22nd July, 2008 in the category of "Directions".

4. Thereafter the Judgment Debtor had filed a fresh application being EA No. 304/2008 praying, inter alia, for permission to place on record certain factual

developments and passing of subsequent orders to the order dated 9th April, 2008. The said EA No. 304/2008 came up for hearing on 9th July, 2008. The operative portion of the order dated 9th July, 2008 is reproduced hereunder :

Learned Counsel for the Judgment Debtor submits that on 5.5.2008, an order has been passed in WP(C)No. 2989/2008 entitled "Delhi Cement Grading Unit Employees Union v. UOI and Ors." directing the Union of India to give an opportunity of hearing to the petitioners in the aforesaid petition before the Judgment Debtor is granted permission to close its 7 units for the purposes of sale. Counsel for the Judgment Debtor submits that thereafter, a hearing has taken place, and orders are reserved. He further states, on instructions, that orders are likely to be passed in the month of July, 2008 itself. He assures the Court that the admitted liability of Rs. 11,02,94,044.54/- as referred to in the order dated 9.4.2008 shall be paid to the Decree Holder in the first instance immediately upon sale/auction of the first available unit with the Judgment Debtor and the same shall be disbursed directly to the Decree Holder under intimation to this Court. The Director (Personnel) of the Judgment Debtor shall file an affidavit to the aforesaid effect on the record within one week, with an advance copy to the Decree Holder, to enable this Court to take a view in the matter. Counsel for the Decree Holder opposes the aforesaid proposal made on behalf of the Judgment Debtor and states that the issue of payment of Rs. 11,02,94,044.54/- to the Decree Holder in terms of the order dated 9.4.2008 cannot be linked with the sale of the units by the Judgment Debtor. He instead submits that in view of the order dated 16.11.2004, he is entitled to the sale of the attached property situated in Delhi. This aspect of the matter shall be taken into consideration after examining the affidavit directed to be filed by the Judgment Debtor.

5. The matter was renotified on 26th August, 2008 in the category of "directions" and the same was again adjourned to 10th September, 2008 on that date. Lastly the matter was listed on 9th February, 2009.

6. I have heard the learned Counsel for the parties and have also gone through the affidavit of Mr. R.P. Tak, Director, (Finance), Cement Corporation of India Ltd. SCOPE Complex, 7 Lodhi Road, New Delhi, filed in compliance of order dated 9th July, 2008. In fact the statement made in this affidavit is almost the same as recorded in order dated 9th July, 2008 except in para 6 of the affidavit where the undertaking has been given by the Judgment Debtor by making the statement that the CCI shall pay the balance decretal amount of Rs. 11,02,94,044.54 to the Decree Holder within two weeks from the receipt of the requisite amount of the sale proceeds in respect of its first non-operating unit of CCI. Learned Senior counsel for the Judgment Debtor has made similar submissions before this Court on 9th July, 2008. However, after some hearing, the learned Counsel for the Judgment Debtor is agreeable that the Judgment Debtor shall pay the admitted liability of Rs. 11,02,94,044.54 as referred in the order dated 9th April, 2008 by 15th May, 2009 as the Judgment Debtor is hopeful to get the permission to close

its seven units and will have sufficient funds to clear its admitted liabilities after the sale of seven units by that time.

7. On the other hand, learned Counsel for the Decree Holder has vehemently opposed the request of the Judgment Debtor and made his submissions to the effect that in the order dated 9th July, 2008 the Judgment Debtor has made the statement that orders pertaining to closure of its seven units for the purpose of sale were to be passed in the month of July, 2008 itself and more than six months have been passed but nothing has been paid by the Judgment Debtor as against the admitted liability. The Decree Holder under the said circumstances, is insisting to pass an order of proclamation of sale of the immovable property of the Judgment Debtor described in Annexure "G" to the execution petition i.e. registered office of Cement Corporation of India Ltd., Core-V, Scope Complex, Lodhi Road, New Delhi and Okhla Industrial Estate, Phase-I. However, the learned Senior counsel for the Decree Holder later agreed that if the said amount is paid by the Judgment Debtor by 15th May, 2009, than he will not press for relief of proclamation of the sale of immovable property. 8. Considering the over all facts and circumstances of the present case, I grant the final opportunity to the Judgment Debtor to comply the order dated 9th April, 2008 to pay the admitted liability of Rs. 11,02,94,044.54 by 15th May, 2009 to the Decree Holder. In failure to pay such amount by the date fixed, an order of proclamation of sale of immovable property under attachment of the Judgment Debtor i.e. registered office of Cement Corporation of India Ltd., Core-V, Scope Complex, Lodhi Road, New Delhi shall be drawn up. The proclamation be also made by beating of drum adjacent to the property to be sold and proclamation shall also be published in the newspaper "Statesman" (English Edition) and "Nav Bharat Times" (Hindi Edition) for 10.8.2009 by filing of PF and deposit of publication charged.

9. It is clarified that in case the Judgment Debtor pays the amount of admitted liability of Rs. 11,02,94,044.54 by 15th May, 2009, this order of proclamation of sale of the property of Judgment Debtor shall be treated as cancelled and ineffective. List this matter on 15th September, 2009 for direction.