

(2003) 02 SC CK 0089

In the Supreme Court Of India

Case No : Civil Appeal No. 1054 of 2003

Wellworth Vanijya Pvt. Ltd.

APPELLANT

Vs

Chowdhury Udyog Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:

Citation : AIR 2003 SC 1627 : (2003) AIRSCW 1018 : (2003) 2 BC 286 : (2003) 5 JT 184 : (2003) 1 SCALE 701 : (2003) 9 SCC 178 : (2003) 2 Supreme 28

Hon'ble Judges : N. Santosh Hedge, J;B. P. Singh, J

Bench : Division Bench

Advocate : Ashok H. Desai, C.K. Jain and Parijat Sinha, Arun Jaitley, Huzefa Ahmed, Ejaj Maqbool, Ujjal Kr. Jha, Aslam Ahmad, Ranjan Kumar Jha, Nakul Dewan and Gautam Mitra, for the Appellant;

Final Decision : Disposed Of

Judgement

Santosh Hegde, J.

C.A.No. of 2003@SLP (SIC) No. 17976/02:

1. Leave granted.

2. The High Court by the impugned order while allowing the appeal filed by the appellant herein remanded the matter back to the Company Judge by setting aside the sale confirmed in favour of the first respondent for sale of the assets of the Company in liquidation by initiating proceedings afresh. In this appeal, the appellant contends that its offer of Rs. 4.25 crores which was the highest and above the valuation price fixed for sale of the company's properties ought to have been accepted instead of remanding the matter to the Company Judge. In the connected appeal the first respondent has challenged the order of the High Court on the ground that its offer was the best offer, when accepted, hence, there was no reason why the Appellate Bench ought to have cancelled the confirmation made in its favour.

3. We have heard learned counsel for the parties and perused the records. The Company in question was wound up as far back as on 28.2.1986 when its assets were valued at Rs. 7.50 crores (approx.). Since the property in question could not be sold, the property was revalued on 19.11.2001 at Rs. 4.16 crores (approx.). When the property was put to sale for the last time, the first respondent in this appeal offered Rs. 3 crores which is far less than the value fixed by the official valuers. However, the sale was confirmed on 7.12.2001 but the Appellate Bench on 21.12.2001 set aside the said sale among other things, coming to the conclusion that the amount offered by the first respondent being very much on the lower side, under Clause 11 of the terms and conditions of sale, it had the jurisdiction to set aside the confirmation of the sale made earlier. While doing so the Court did not take into consideration the offer made by the appellant herein which was for a sum of Rs. 4.25 crores. The contention on behalf of the appellant in this case is that the value of the property is diminishing day by day and by directing a fresh sale all over again, it would not benefit the creditors of the company in any manner, therefore, the offer made by it ought to have been accepted by the High Court. We have also considered the arguments addressed in opposition by the first respondent herein. It is necessary to note herein that when the matter had come up for further orders on earlier dates starting from 11.11.2002, noticing the fact that the value of the property was diminishing, we called upon the parties to offer their bids in this Court so that the matter could be settled once for all without further delay so as to safeguard the interests of the creditors to the extent possible. Though this matter was adjourned from time to time, expecting the respondent to make a better bid than what was made by the appellant, we are informed today that the said respondent is not willing to make any higher bid. On the contrary, he wanted to question the judgment of the High Court which has cancelled the confirmation of sale made in his favour.

4. As noted above, the Company was wound up as far back as on 28.2.1986 and the creditors of the Company have not been able to receive anything only because of the fact that the assets of the Company could not be sold. The value of the assets of the Company has come down from Rs. 7.5 crores to Rs. 4.25 crores which is the best offer received as on today; whereas the offer made by the first respondent is only Rs. 3 crores and he is not willing to enhance it. In the above fact situation, without going into the legality of the questions involved, bearing in mind solely the interests of the creditors, we think the offer made by the appellant of Rs. 4.25 crores should be accepted. Therefore, allowing this appeal and setting aside the impugned judgment, we direct the Company Court to accept the offer of Rs. 4.25 crores made by the appellant and on the appellant depositing the balance amount, necessary documents may be executed in its favour.

5. For the reasons stated above, this appeal is allowed.

SLP (SIC).....CC8753/02:

6. For the reasons given by us in C.A.No...../2003 arising out of SLP (SIC) No. 17976/02 wherein we have considered the case of the first respondent, we find no merit to entertain this SLP and condoning the delay in its filing, we dismiss SLP (SIC) No.....CC 8753/02.

IA No. 1 of 2003 in SLP (SIC) No. 17976/2002:

7. In this I.A., the applicant--Ispat Peletech Ltd.--has submitted that it had offered Rs. 8.75 crores for purchase of the assets of the company in question in the year 1990 and the said order was accepted by the Company Court and confirmed but this Court by an order dated 7.2.1991 set aside the said bid and directed the Company Court to call for fresh bids. The applicant contends that along with his offer, it had deposited Rs. 87.50 lacs towards the sale consideration which amount even according to the judgment of this Court dated 7.2.1991 is liable to be returned to it but in spite of repeated applications made to the Company Court, the said amount is still retained by the official liquidator who has no jurisdiction to do so because the amount in question was deposited as part of the sale consideration which sale set aside by this Court and this Court while doing so, had observed that it was open to the applicant to apply to the court for appropriate directions in respect of the money which it had already deposited. We think in the interest of justice since the amount in question does not belong to the Company, it is appropriate to issue directions to the official liquidator to refund the money in question. Accordingly, this application is allowed. The applicant is added as a party to this appeal and there shall be a direction to the official liquidator to refund the sum of Rs. 87,50,000/- to the applicant within two months from the receipt of this order. This IA is allowed accordingly.