
(1996) 05 CAL CK 0012

In the Calcutta High Court

Case No : Appeal No. 46 of 1990 / Matter No. 5615 of 1987

West Bengal Financial Corporation

APPELLANT

Vs

Metcoke (India) Private Ltd.

RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 30

Citation : (1996) 2 ILR (Cal) 13

Hon'ble Judges : Visheswar Nath Khare, C.J.; Samir Kumar Mookherjee, J

Bench : Division Bench

Advocate : Ashok Dhandania, for the Appellant; Pradip Kumar Ghosh and Jayanta Mitra, for Auction Purchaser, for the Respondent

Final Decision : Allowed

Judgement

Samir Kumar Mookherjee, J.—This appeal is at the instance of West Bengal Financial Corporation and its three officers. It is directed against the order of a learned Single Judge, dated December 20, 1989, whereby an application for writ, preferred on behalf of Respondent No. 1, had been partly allowed.

2. Relevant-facts are more or less admitted. The Respondent No. 1 obtained loan in different installments, beginning from 1976, approximately of a sum of Rs. 9.72 lakhs, the interest on which amounted to Rs. 12,63,728,83, and other alleged dues, roughly of Rs. t lakh, which ultimately, according to the Appellant, on February 28, 1987, amounted to Rs. 30,54,000,00 and odd. The said amount was secured by fixed and/or block assets of the Respondent company, including land, building, plant and machinery and the amounts were to be repaid by 15 half yearly installments, as initially agreed upon. For diverse reasons Respondent No. 1, could not repay such loan and, accordingly, upon invocation of its powers under Sections 29 and 30 of the State Financial Corporation Act, the Appellant took over possession of the factory with all its plants and machineries in its entirety. By two advertisements, dated May 5, 1986, in two newspapers, the said factory in its entirety, was proposed to be sold on "as is where is basis". The

Respondent company, by its letter dated May 29, 1986, objected to the sale being held in pursuance of the said two advertisements, inter alia, on the grounds that the advertisements understated the productive capacity of the plants and machineries and at a subsequent stage another objection was raised for non-disclosure of the area of land pertaining to the property, which according to the Respondent No. 1 being nearly about 46 acres, could be said to be sufficient to attract higher offers. According to the report or the valuer appointed by the Appellant the entire factory with plant and machinery, stock etc. could fetch a fair market value of approximately 15,52,000,00; ultimately the auction purchaser, client of Mr. Jayanta Mitra, gave an offer of purchasing the property at Rs. 11 lakhs and since the Corporation's attempt to procure better offer through Banks and financial institutions, including the Steel Authority of India proved abortive, negotiation was undertaken with the auction purchaser, who was persuaded to increase his offer to Rs. 18 lakhs. On receipt of such offer, by its letter dated April 1, 1987, the Corporation informed the Respondent No. 1, to arrange for obtaining a better offer within 15 days along with a bank draft covering such offer but no enhanced offer could be procured by Respondent No. 1, with the result that, by its letter dated April 16, 1987, the bid of 18 lakhs had been accepted and Rs. 6 lakhs were received from the intending purchaser as part payment. In the background of such factual developments, the writ application, out of which the present appeal arises, had been moved by Respondent No. 1, inter alia, praying for recalling and cancellation of the intimation dated April 1, 1987, issued by the Appellant, and with a prayer for interim injunction, restraining the Appellant from effecting sale of the Respondent No. 1's factory and from delivering possession thereof to any person.

2. In the said writ proceeding, an affidavit-in-opposition had been filed on behalf of the present Appellant, inter alia, justifying the correctness of the statement about productive capacity of the plant and machinery, installed in the factory of the writ Petitioner. From the materials produced before the Trial Court, it appears that the valuer appointed by the Respondent No. 1, valued the land at Rs. 9.20 lakhs, whereas the valuer appointed by the Appellant valued the land at Rs. 8,08,000,00, approximately. The learned Trial Judge by the impugned order came to a conclusion that in view of non-disclosure of the area of land and the understatement of the productive capacity the auction sale was vitiated by material irregularity and set aside the accepted offer of Rs. 18 lakhs with liberty to the Appellant to issue fresh notice after proper valuation report with notice to the writ Petitioner and after disclosure of the nature and extent of the property afresh in the tender notice. The present appeal is directed against such conclusions.

3. In course of hearing of the appeal, the auction purchaser expressed his willingness to relinquish all his rights, accruing out of his offer of Rs. 18 lakhs having been accepted, if the money paid by him had been refunded back with interest. Accordingly, on the prayer made on behalf of the writ Petitioners/ Respondents, we adjourned the matter to enable the learned Counsel

representing them, to take instructions as to whether they were willing to do so and also to pay back the dues of the Appellant. When the matter re-appeared after expiry of such time we got a reply from Respondent No. 1, in the negative and, accordingly, we decided to dispose of the appeal on merit.

4. In the case of Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, while indicating the criteria for accepting the confirmation of an auction sale, the Apex Court laid down, in no unmistakable term, that it may be unfortunate that a lesser price was fetched but mere inadequacy of price could not demolish a sale (a Court sale) where best efforts were made, time after time, to raise the price": a Judge was not to be a prophet but a pragmatist. It was also not necessary to go on adjourning the matter till a good price was obtained as in that event the Corporation was to be put off indefinitely in recovering its dues on baseless expectations and distant prospects, and, accordingly, in the cited case, an offer of Rs. 11.5 lakhs openly to by the industry was held to be not an easy task even for affluent businessmen and the failure of the private Respondent to produce buyers with higher offers by private negotiation had been taken into consideration by the Court.

5. In the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, the tests, laid down for exercise of powers u/s 29 of the State Financial Corporation Act, appear to have been fully satisfied in the instant case. The instant sale was by public auction; the valuation of the property and the sale effected on the basis thereof were conveyed to the unit holder, who had been given an opportunity of bringing better offers: bona fide attempts were made by the West Bengal Financial Corporation, the Appellant, to secure higher price and for that purpose various concerns and institutions were approached and the present purchaser had been persuaded to raise its offer from 11 lakhs to 18 lakhs - such enhancement can be taken to be adequate in view of the fact that a very large sum was involved and it could not be expected that one and sundry might have been in a position to tender a bid. The intention of the Financial Corporation to extend accommodation to the unit holder is writ large on the fact of the postponement of coercive action by the Corporation, at the request of the unit holder, from time to time, last but not the least, there has been no effectual allegation of mala fide. In the case of U.P. Financial Corporation v. Gem Cap (I) Private Ltd. and Ors., the decision in Mohesh Chandra's (Supra) case was referred to but had been distinguished on the ground that the debtor was anxious to pay off the debts and had been taking several steps to discharge his obligation. In that case it was, however, unmistakably laid down that the concept of fair action on the part of the Corporation cannot be carried to the extent of disabling it from recovering its rightful dues and the Corporation alone could not be shackled hand and foot in the name of fairness, which was a two way street. It was further held that in the absence of specific material, showing unfair action on the part of the Corporation, a writ Court was not entitled to act as the Appellate Court over administrative authorities. The import of the principle laid down in the said case appears to be that writ Court could not interfere unless

the decision of the Corporation was found to be perverse or akin to absurdity, so to say.

6. Applying the aforesaid principles to the facts of the present case, we cannot but disagree with the conclusions reached by the learned Trial Judge. The concept of material irregularity, as evolved in the privy Council decision, referred to by the learned Trial Judge, had been evolved because of provisions in the Code of Civil Procedure, which cannot apply ipso facto to an auction sale, held under the State Financial Corporation Act, which is a special statute, meant to sub-serve special needs and take care of special circumstances.

In the instant case, the records show absence of any anxiety on the part of Respondent No. 1 to pay off its debt or discharge its obligation to the Corporation. There is no reason also as to why Respondent No. 1 failed to bring a better offer or why it did not, at the initial stage, asked for a fresh advertisement. Even, in course of hearing of the appeal, inspite of the opportunity given by us, in view of gesture of Mr. Mitra's client to relinquish his rights accruing out of auction sale in question, on payment back of the money paid by him, the Respondent No. 1 did not signify any willingness to make payment. No doubt, an attempt was made to plead reasons for failure on the part of Respondent No. 1 to pay according to the contractual terms, but such reasons appear to us to be very feeble, if not routine.

7. In such view of the matter we allow the appeal, set aside the order impugned in the appeal and dismiss the application for writ. There will be no order as to costs.

Visheswar Nath Khare, C.J.: I agree.