In Re: Pyrites, Phosphates and Chemicals Ltd. (In Liquidation)

In Re: Pyrites, Phosphates and Chemicals Ltd. (In Liquidation)

SooperKanoon Citation : sooperkanoon.com/132016

Court : Patna

Decided On : Jan-22-2009

Judge : S.N. Hussain, J.

Appellant : In Re: Pyrites, Phosphates and Chemicals Ltd. (In Liquidation)

Judgement :

S.N. Hussain, J.

1. I.A. No. 6620 of 2008 (Flag-82): Put up this interlocutory application on January 29, 2009.

2. I.A. No. 5339 of 2008 (Flag-75): Office has reported that pages 23 to 26 are faint. Hence, learned Counsel for the applicant is directed to supply readable typed copy of the same within one month. Put up this application after one month.

3. Application dated November 12, 2008 (Flag-85): This application has been filed on behalf of Sri Kamal Arora, who was the highest bidder of schedule IV property of the company in liquidation situated in the district of Dehradun.

4. The contention of the applicant is that he had deposited the entire consideration money of the bid amounting to Rs. 5,26,00,000 and when the sale deed executed by the official liquidator was presented before the registering authorities, the said authorities stated that the said deed cannot be taken as a sale deed, rather it has to be taken as a certificate of sale issued in pursuance of the public auction and

hence the highest amount of stamp duty was to be paid. He has stated that he has already paid stamp duty worth Rs. 47,00,000 and odd which was in accordance with the provision of law with regard to sale deed. Hence, he prays for a declaration that the deed executed by the official liquidator in favour of the applicant is a sale deed and not a sale certificate as is being wrongly interpreted by the registration authorities of Dehradun. He has relied upon a decision of the Allahabad High Court in the case of Vishwa Nath Agarwal v. State of U.P. reported in [2004] 56 ALR 264 : [2005] 128 Comp Cas 452.

5. It is also stated by the parties that previously also in such matter always sale deeds were being executed and stamp duties were being levied by the authorities treating them as sale deeds. In the facts and circumstances, it has to be decided whether the deed executed by the official liquidator is a deed of sale or a sale certificate and whether the sale in question has been made by public auction or it is by inviting tender.

6. So far the term 'public auction' is concerned, it means a public sale of land or goods, at public outcry to the highest bidder. Reference in this regard may be made to Black's Law Dictionary (revised), fourth edition. In the instant case, there was no sale by public auction or by public outcry as in such cases, the auction is a manner of selling or letting property by bids usually to the highest bidder by public competition and the price by which the public was asked to pay is the highest which those who bid can be tempted to offer by the skill and tact of the auctioneer under the excitement of open competition. Hence, in such a case an auction is held by public competition wherein every bidder knows the bid of the other and has right to raise his own bid and the atmosphere created is to tempt the bidder to raise his bid and enhanced price can be fetched by the said mode.

7. On the other hand, in a sale by tender no such opportunity is available to the tenderer and in such sales none of the persons or tenderers know the price offered by the others and it is merely an advertisement that goods or services are to be bought or sold by tender and prima facie it is not an offer to sell to the persons making the highest tender. Reference in this regard may be made to Halsbury's Laws of England, volume 9, fourth edition.

8. Here, in the instant case, no public auction was made nor any offer was made as such and it was only by advertisement that goods or services are to be sold by tender and the tender offered by every tenderer was never known to the others. Section 457(1)(c) and (2) of Part VII of the Companies Act, 1956, specifically provides that the official liquidator executes only a deed of sale and not a certificate of sale. Furthermore, Rules 272 and 273 of the Companies (Court) Rules, 1959, provide that every sale shall be held by the official liquidator as per the direction of the court under the Companies Act.

9. Apart from the aforesaid provisions, article 18 of Schedule I-A to the Indian Stamp Act, 1899 (as amended), provides that sale certificates are granted to the purchaser of any property sold by public auction by a civil or revenue court or Collector or other Revenue Officer, but here in the instant case, the property was not sold by public auction by any such authority, rather the matter was decided by the company court under the specific provisions of the Companies Act and the official liquidator was executing the sale deed on the basis of the order of this Court under the provisions of the said Act and the Rules.

10. In the aforesaid facts and circumstances of the matter, it is hereby held that deed in question executed by the official liquidator is a deed of sale and not a certificate for sale and hence the stamp duty will be payable treating the said deed as a sale deed.

As prayed for, put up this case on January 29, 2009, for consideration of other matters.