

Silverline Technologies Ltd. Vs. Development Bank of Singapore and

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Court : DRAT Mumbai

Decided On : Sep-14-2006

Reported in : I(2007)BC192

Judge : S Parkar

Appellant : Silverline Technologies Ltd.

Respondent : Development Bank of Singapore and

Judgement :

1. A short question which arises in this appeal is whether the Recovery Officer can issue a sale certificate in respect of the immovable property which was in the possession of D.R.T. receiver and sold by a private treaty as sanctioned by the Recovery Officer.

The sale certificate issued earlier was withdrawn by an order dated 17th, July, 2006 passed by the Recovery Officer of D.R.T.-II, Mumbai against which the appeal filed before the D.R.T was also dismissed on 7th August, 2006 which order is impugned in the present appeal.

3. While dismissing the appeal, the D.R.T.-II has observed that if the sale is by private treaty, the sale certificate cannot be issued by the Tribunal. It is further observed that the sale certificate is issued by the Tribunal in a case in which the Recovery Officer himself undertakes to sell and not in a sale by private treaty in which the Recovery Officer has no role to play and therefore he dismissed the

appeal from the facts which have been placed on record and presented before me I do not think that the impugned order of the D.R.T. can be sustained.

4. The facts briefly stated which are relevant for the purpose of deciding the above question are as follows: The respondent No. 1 Bank had filed an Original Application against the appellants for recovery of their dues. The respondent No. 2 Bank is the debenture trustee representing the diverse debenture holders like J & K Bank, Bank of Bahrain and Kuwait, Ratnakar Bank, etc. The respondent No. 3 who was impleaded as a party had obtained a decree against the appellants and was also having prior interest in the property of the appellants. The respondent No. 4 is the purchaser of the appellants' property. The property of the appellants was an immovable property situated at Dhokali, Kolshet Road, Thane (West).

5. On 8th August, 2003 an interim order was passed by the Presiding Officer of D.R.T.-II, Mumbai appointing the receiver in respect of the said property. The power to sell the property by public auction, subject to confirmation by Tribunal was given pursuant to which the D.R.T. receiver was in possession of the property from 22nd September, 2003 and an inventory was prepared. A notice was also affixed on the property about appointment of the receiver in respect of the said property. Thereafter an advertisement was issued in December, 2003 for public auction of the movable and immovable property of the appellants.

Pursuant to the said advertisement, only one offer was received on 23rd January, 2004 that also in respect of the movable property only which was below the reserve price but there was no offer, received in respect of the immovable property. Thereafter, the respondent Banks made an application before the D.R.T. for permitting the sale of the property by private treaty, which was granted by the D.R.T. by its order dated 5th May, 2004. Then on 29th October, 2004 the Original Application was disposed off by the D.R.T. allowing the Original Application against the appellants directing them to pay Rs. 23,91,99,931/-; with interest on Rs. 22,91,38,182/- at the rate of 14% per annum from the date of filing of the Original Application till full realization. A declaration was also granted about the security in favour of the applicant Banks subservient to mortgage/charge of the respondent Nos. 2 & 3 in this appeal.

6. By the said order the D.R.T. receiver was directed to continue the recovery proceeding. There was also another certificate. After the decree was passed by D.R.T., the recovery proceeding commenced. On 9th March, 2005 the appellants applied in the recovery proceeding for confirming the sale of the immovable property in favour of the First Call India Equity Advertisers Pvt. Ltd. for a total consideration Rs. 17,50,00,000/-, the debenture holders had also given the consent for the sale of the property by private treaty as per the minutes of the meeting of the debenture holders held on 2nd May, 2006. Accordingly the Recovery Officer passed an order dated 5th May, 2006 granting application in terms of prayer Clauses (a) to (c) of the application which are as follows: (a) that the Hon'ble Tribunal be pleased to confirm the sale of the property at Dhokali, Kolshete Road, Thane (W) in favour for First Call India Equity Advertisers Pvt. Ltd. or its nominee for a total consideration of Rs. 17,50,00,000/-.

(b) that on confirmation of the sale of the said property in favour of the said First Call India Equity Advertisers Pvt. Ltd., the D.R.T. receiver be permitted to transfer the E.M.D. of Rs. 2 crores to a No Lien Account.

(c) that on confirmation of the sale of the said property in its favour the said First Call India Equity Advertisers Pvt. Ltd. be directed to deposit the balance amount of the sale proceeds amounting to the Rs. 15,50,00,000/- (Rupees Fifteen Crores Fifty lacs only) with the D.R.T. receiver within such reasonable times as this Hon'ble Tribunal may deem fit and proper.

7. Thereafter on an application made by the appellants on 2nd June, 2006 the Recovery Officer on 6th June, 2006 passed an order for sale of the property in question in favour of the respondent No. 4 namely Effective Tele services Pvt. Ltd. which is the nominee of First Call India Equity Advertisers Pvt. Ltd. as follows: 1. the sale will be in the name of Effective Teleservices Ltd. i.e.

the nominee of First Call India Equity Advertisers Pvt. Ltd. on the condition that First Call India will file affidavit stating the facts and also showing that there was no collusion or under bargain between the purchaser and the nominee.

2. The purchaser has to deposit the full payment within the fifteen days from today alongwith the poundage fees. The D.D. will be in the name of J & K Bank.
3. The Tribunal Receiver will deposit the D.D. of Rs. 2 crores in the Tribunal which will be transferred to the J & K Bank.
4. J & K Bank to keep the amount of Rs. 2.00 crores in a "No Lien Account-Silverline Technologists Ltd. till further orders are passed for distribution of this amount as per the minutes of the meeting of the Debenture holders.
5. If the full and final payment is not deposited within 15 days from today the E.M.D. amount will be forfeited.
6. The Tribunal is not aware of any encumbrances on the property.

However, all the statutory dues will be borne by the purchaser.

7. Issue notice to the C.H. Bank informing the sale of the property and also that orders for the distribution of sale proceeds will be passed on 7th July, 2006. A copy of this order be also sent to C.H. Bank by registered post.

8. Thereafter on 23rd June, 2006 the Recovery Officer also issued clarificatory order directing the purchaser to deposit the full payment alongwith the poundage fee in the name of the Recovery Officer D.R.T-II Mumbai by 29th June, 2006 in the form of D.D./Pay order instead of in the name the J & K Bank as directed earlier. After depositing the purchase price of Rs. 17.50 crores on 4th July, 2006 by drafts issued in favour of the Recovery Officer, D.R.T.-II, Mumbai. the purchaser also deposited Rs. 17.50 lacs being 1/% poundage fee payable to the D.R.T. as directed by the Recovery Officer. On 10Oth July, 2006 the Recovery Officer made disbursement of the amount by cheque drawn on the Recovery Officer's account to the first Charge holder as per the priority amongst the creditors and also issued an unsigned sale certificate to the purchaser for the purpose of stamping.

9. On 11th July, 2006 the first charge holder also filed an affidavit acknowledging the receipt of the money from the Recovery Officer.

Thereafter on 17th July, 2006 the Recovery Officer, who had issued the order on 6th June, 2006 allowing sale of the property in the name of the nominee Effective Teleservices Ltd. and had clarified by order dated 23rd June, 2006 that the amount had to be deposited in the name of the Recovery Officer in stead of J & K Bank and had received the sale price by drafts and had also made disbursement of the amount to the first charge holder on 10th July, 2006, passed an order withdrawing the sale certificate curiously without setting aside the sale and without asking for refund of the money paid to the Banks.

10. Thereafter on 1st August. 2006 the Recovery Officer quantified the receiver's remuneration/fee at Rs. 50,000/- and issued an order to the receiver to hand over the possession of the property on payment of his fees. Accordingly, on 3rd August, 2006 the D.R.T. receiver had handed over the possession on payment of receiver's fee. On the application of the appellants title deeds were released to the purchaser and acknowledgement was obtained. Since the Recovery Officer passed the order dated 12th July, 2006 referred to above of withdrawing the sale certificate, the appellants preferred an appeal on 26th July, 2006 before the D.R.T. However, the said appeal was dismissed by the D.R.T. on 7th August, 2006 for the reasons which have been mentioned hereinabove.

11. The aforesaid details go to show that right from the time of filing of the Original Application and even before the Original Application was disposed off, the property of the appellants was in the hands of the D.R.T. receiver. It is very well settled principle that when a property is in the hands of the Court Receiver, possession thereof is that of the Court and therefore, in this case the property was in the possession of the D.R.T. The public advertisement for public auction was also issued in respect of the property in question by the D.R.T. As there was no offer received in respect of the immovable property, the order was passed by the Presiding Officer to sell the property by private treaty. That was before the Original Application was disposed off. After the disposal of the Original Application on 29th October, 2004 the recovery proceeding commenced and the Recovery Officer came into the picture. The valuation report in respect of the property was submitted by the valuer appointed from the panel of the D.R.T. for the purpose of sale of the property by private treaty to the particular buyer and approval of the

Recovery Officer was obtained on 5th June, 2006. It was the Recovery Officer who had confirmed the sale of the property in favour of the purchaser. The amount of the purchase price was deposited with the Recovery Officer who also disbursed the sale proceeds thereof amongst the creditor Banks as per their inter se priority by issuing cheques from his account. The Recovery Officer had also recovered the poundage fee at the rate of one per cent which amounted to Rs. 17.50 lacs. The said, amount was received by the D.R.T. The poundage fee was payable to the D.R.T. because, the property was sold through the officers of the D.R.T. and receiver's fee of Rs. 50,000/- was also paid as per the order passed by the Recovery Officer.

The possession of the property was handed over to the purchaser by the D.R.T. receiver as per the direction of the Recovery Officer. The title deeds of the property in question were deposited with the D.R.T. who handed over the same to the purchaser.

12. In the aforesaid facts and circumstances, it is rightly contended on behalf of the appellants that though the property was sold by private treaty, it was sold to the purchaser after the directions were obtained from the Recovery Officer. No step was taken in the sale of the said property without permission, approval and concurrence of the Recovery Officer except that the purchaser was arranged by the appellants and the price was negotiated by the creditor Banks but approval in respect of the purchaser as well as price was granted by the Recovery Officer.

13. The next question that will have to be considered herein is whether in spite of the aforesaid part played by the Recovery Officer is there any prohibition for issuance of the sale certificate by the Recovery Officer only because the property was not sold by public auction. The sale by private treaty had become necessary because pursuant to the advertisement given for public auction, no party had come forward.

However, it cannot be forgotten that permission to sell the property by private treaty was given by the Recovery Officer. Moreover, there is no prohibition on the Tribunal or its officer i.e. the Recovery Officer to issue the sale certificate only because the property could not be sold by public auction and the property was

sold by private treaty. The sale of the property which was effected in favour of the purchaser cannot be said to be absolutely private in the sense that it was not done without permission or approval or behind the back of the Recovery Officer. In my view for such sale the Regulations applicable to the D.R.T. have made a provision. Reference may be made to the D.R.T., Maharashtra & Goa, regulations of Practice, 2003. Rule 60(8) of the said Regulations provides for issuance of sale certificate in Form No. 51. The format of Form No. 51 is as follows: This is to certify that...has been declared the purchaser at a sale by public auction/private treaty held on the...of the under mentioned movable property for Rs. ... (Rupees...) for recovery of dues from ... and that the said sale has been duly confirmed by the....

14. This certificate is supposed to be signed by the Registrar/Recovery Officer of the D.R.T. In other words the fact that the format of Form No. 51 makes provision for issuance of the sale certificate by the Recovery Officer in respect of the sale of the property even by private treaty would mean that the law contemplates issue of sale certificate by the Recovery Officer in respect of the sale of the property even by private treaty.

15. Apart from this, reliance is placed on behalf of the appellants on the precedents. Approval and sanction for the sale of the property by private treaty has such precedent, copy whereof is produced in the compilation filed by the appellants. There was an application made for sanctioning the sale of the property by the judgment debtor Laxmi Vishnu Textile Mills by private treaty in the Recovery Proceeding No.464 of 2002 from Original Application No. 2638 of 1999. The application was made in July, 2005, pursuant to which, the order of confirmation of sale was issued by the Recovery Officer, D.R.T.-I, Mumbai on 22nd December. 2005.

16. Reliance is also placed on the order dated 11th May, 2006 passed by the in-charge Presiding Officer of D.R.T.-I, Mumbai in the case of Punjab National Bank v. West Coast Brewers and Distillers Ltd., (Original Application No. 3174 of 2000) directing the Recovery Officer to issue sale certificate in respect of the sale effected by private treaty.

17. Reliance is then placed on the order of confirming the sale of the immovable property by the D.R.T.-II. Mumbai in Original Application No.165 of 2001 Vijaya Bank v. Suresh Engineering Corporation. In that also the receiver was appointed and the sale was confirmed subject to deposit of poundage fee.

18. Similarly an application was made in the Recovery Proceeding No.101 of 2003 in Original Application No. 2020 of 2000 Sumitomo Mitsui Banking Corporation v. Victor Metal Chem. Pvt. Ltd. for issue of sale certificate by private treaty, which was granted pursuant to which the sale was confirmed.

19. Even Rule 8 of The Security Interest (Enforcement) Rules, 2002 of the SRFAESI Act, 2002 provides for sale of the immovable secured assets by private treaty as one of the modes of sale in respect of which the sale is required to be confirmed and the sale certificate is required to be issued under Rule 9 of the said Rules.

20. The practice of issuing sale certificate by the D.R.T. on private sale is not an invention by the D.R.T. or the D.R.T. Regulations but such provision has been made and followed even by the High Court as indicated by the Bombay High Court (Original Side) Rules. The relevant rules are Rules 561 to 577. Rule 577 of the said Rules provides as follows: Rule 577. Sale by private contract. - The sale of property ordered to be sold by the Commissioner by private contract shall be regulated by the foregoing rules, so far as they may be applicable.

21. In spite of the aforesaid Rules. Regulations, Practices and Precedents followed even by the same D.R.T. in the past, why the sale certificate in this case was declined to be issued. As observed earlier, the proceeding of sale by private treaty was conducted not only with the knowledge but also with the consent and approval of and in the gaze of the Recovery Officer. Even the property was in the hands of the D.R.T. Receiver who handed over the property in question to the purchaser pursuant to the directions of the Recovery Officer. It was the Recovery Officer who handed over the title deeds to the purchaser.

It was because of these services rendered by the officers of the D.R.T. particularly the Recovery Officer and the receiver appointed by the D.R.T., poundage fee

could be claimed as per the rules and was paid to the D.R.T. If that is so, who else could issue the sale certificate in respect of the property in question? In the result, the orders of the Recovery Officer dated 17th July, 2006 and that of the D.R.T. dated 7th August, 2006 are set aside and the appeal is allowed in terms of prayer Clauses (a) and (b).

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