Jainsons Export India Vs. Binatone Electronics Ltd. and Others

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Court : Delhi

Decided On : Mar-31-1995

Reported in : [1996]85CompCas796(Delhi); 58(1995)DLT571; (1995)111PLR1

Judge : J.K. Mehra, J.

Appeal No. : C.P. No. 93 of 1992 and C.A. Nos. 681, 834 and 835 of 1994, 211 of 1995

Appellant : Jainsons Export India

Respondent : Binatone Electronics Ltd. and Others

Advocate for Pet/Ap. : B.N. Nayar and; K.N. Tripathy, Advs

Judgement :

J.K. Mehra, J.

1. In this case, the property of the company under liquidation at Bombay was sought to be sold by public auction and such sale being subject to confirmation by this court was confirmed on May 25, 1993, after the court had heard the official liquidator and Mr. B.N. Nayar, who was specially appointed to assist the court to ensure that everything had been done and the maximum price possible under the circumstances had been obtained at such auction. Subsequently, at the instance of the official liquidator and certain parties interested in bidding, the court stayed

handing over of the possession of the property to the auction purchaser pending further hearing. The court also wanted to be satisfied about the effect of the non-compliance with rule 139 of the Companies (Court) Rules.

2. On a perusal of the record of this case, I find that this company was wound up on the recommendation of the Board for Industrial and Financial Reconstruction under the Sick Industries (Special provisions) Act, under section 20(2) of the said Act and not on a petition of a creditor. Since the company was not wound up on the petition of a creditor, the provisions of rule 139 of the Companies (Court) Rules are not attracted in the present case and that the contention raised by one of the parties, namely Mr. Basant Kumar Pachisia, is absolutely unfounded.

3. However, there are certain other facts which have come to light in the course of the arguments which have an important bearing on the outcome of this case. One of the important considerations which weighed with me at that time was what was submitted by Mr. B.N. Nayar before me with regard to the highest bid and also the income-tax authorities having assessed the market value of the premises at Rs. 11,07,000. Now Mr. Nayar states that there is no such valuation report forthcoming on record and that he had made this submission only on what was told to him and without himself verifying this fact from the record. I have checked up with the liquidator who confirms that no such valuation report of the income-tax authorities is forthcoming on record. Mr. Nayar further states that even the original record was not made available to him by the liquidator. It is very unfortunate that Mr. Nayar did not verify the facts from the records of the official liquidator before making a statement before the court recommending acceptance of the bid thereby defeating the very purpose of his appointment.

4. Another factor which cannot be lost sight of in the circumstances of this case is that a number of parties have come forward with offers of substantially higher amounts for the same property, the highest being Rs. 26.5 lakhs. Another offer was received during the hearing of Rs. 33 lakhs, but the same was not accompanied by any deposit or bank draft. Counsel for some of the prospective buyers have contended that the price offered by the auction purchaser was not the best price.

5. The very object of making the auction subject to confirmation by the court is to ensure that the highest price is fetched for the assets of the company in liquidation and it was with that object in view that Mr. Nayar was engaged as special counsel to assist the court.

6. I have heard lengthy arguments for and against the proposition as to whether the court can recall its order of confirmation of sale. Counsel for the auction purchaser has vehemently contended that if the property is sold or further auction is held, then any increase in value should ensure to the benefit of the auction purchaser, who has already deposited the full price in this court. In the ordinary circumstances, this proposition may have been accepted, but in a situation where on the face of it the order of confirmation is obtained by misstating the facts and in the light of the offers which have been received not very much later in time than the date of confirmation of sale it becomes clear that the price offered by the auction purchaser was far below the market price, this submission/contention cannot be accepted.

7. The above facts make me suspicious about the bona fides of the sale transaction confirmed earlier about the best price having been obtained. It appears that an order of confirmation of sale was obtained on the basis of the alleged facts which are now found to be incorrect.

8. In view of that position, I think even if sale has been confirmed the court can interfere and recall that order and set aside the sale. I am supported in this view by the view taken by the Madras High Court in the case reported as Pandurangan v. Dasu Reddy, : AIR1973 Mad107 . The above facts do give rise to an impression that the sale that took place was not genuine and free from any sharp practices and fraud. In such case, the court would be justified in suo motu setting aside the sale under its inherent powers. (see Punjab Mercantile Bank Ltd. v. Sardar Kishan Singh, , K.S. Nagendra Iyer v. M. Varadaraja Pillai, : AIR1965 Mad198 . In the light of the law laid down by the Hon'ble Supreme Court in Navalkha and Sons v. Ramanuja Das : [1970]3SCR1 and M. Shankaraiah v. State of Karnataka JT [1993] 5 28, the court could interfere even in cases where misrepresentation regarding valuation or location of the property is involved. The misrepresentation

regarding valuation in the present case is writ large. Mr. Nayar, has on behalf of the official liquidator, fairly conceded this position and has sought revocation of the order confirming the sale in the light of the above facts and has relied upon rule 273 of the Companies (Court) Rules and Order 21, rule 90 of the Civil Procedure Code, 1908, apart from the judgments of the Hon'ble Supreme Court in the cases of Lice (Pvt.) Ltd. v. Official Liquidator , arising out of S.L.P. (C.) No. 12840 of 1992, as also in the appeal arising out of S.L.P. (C.) No. 9504 of 1993, where the question that was dealt with by the Hon'ble Supreme Court was substantially the same. In that case, the company judge, Calcutta High Court, had accepted the highest bid of Rs. 37 lakhs, but had proceeded to further auction and obtained Rs. 38 lakhs. The appellant went in an appeal before a Division Bench. The Division Bench set aside the order of further auction and the matter came up before the Hon'ble Supreme Court where the Hon'ble Supreme Court after considering the law and also the provisions of Order 21, rule 90 of the Civil Procedure Code, 1908, was pleased to entertain the appeal. At that stage, the appellant offered a sum of Rs. 45 lakhs. In view of rule 273 of the Companies (Court) Rules and the law laid down in respect thereof in its earlier judgment in the case of Navalkha and Sons v. Ramanuja Das : [1970]3SCR1 the Hon'ble Supreme Court was pleased to entertain the appeal and order that Rs. 45 lakhs offer before the Hon'ble Supreme Court would be treated as the minimum price and the auction should continue further. The matter went back to the High Court and the further auction yielded a sum of Rs. 1 crore 10 lakhs. Again, the matter was taken in appeal before a Division Bench, which set aside the sale and also cancelled the conveyance deed. Against that, the parties came to the Hon'ble Supreme Court, when Hon'ble Supreme Court was pleased to fix an upset price of Rs. 1.50 crores. The Hon'ble Supreme Court with approval cited its earlier observations which are as under (at page 791) :

'The purpose of an open auction is to get the most remunerative price and it is the duty of the court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value. If that path is cut down or closed the possibility of fraud or to secure inadequate price or underbidding would loom large. The court would, thereforee, have to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case the steps for conducting the sale would be moulded.'

9. The Hon'ble Supreme Court with that object, proceeded to fix the upset price of Rs. 1.50 crores and further provided that 'in the event of appellant not becoming the highest bidder, the equities in respect of his deposit regarding interest may be worked out and adjusted by the learned company judge'.

10. My attention has also been drawn to the case of Surrindra Stein Malt Co. Ltd. v. U.P. Financial Corporation [1995] 4 CLJ 484 of this court when the company court had confirmed the sale, but on further examination, it was found that there was not sufficient material before the court to come to the conclusion that the maximum price/adequate price had been offered. The court was pleased to set aside the order, confirming the sale and had ordered further auction keeping the law in view and the provisions of Order 21, rule 90 as well as rule 273 of the Companies (Court) Rules, 1959, as also the various cases cited at the Bar including JT [1987] 4 368. In the case of M. Shankaraiah v. State of Karnataka JT [1993] 5 28, para 10, the Hob'ble Supreme Court had laid down that the court has the jurisdiction to recall or review its order.

11. I am of the view that the court's power to recall its order if same is warranted in the interest of justice and equity, is not fettered or circumscribed by any rules of procedure which are the hand maiden for promoting the ends of justice not to thwart justice.

12. In the light of the above discussion and particularly, the fact that soon after that order, further offers of substantially higher amounts for the said property were received and that the valuation report of the income-tax authorities assessing market price appears to be non-existent, I am convinced that the maximum price that could be fetched had not been offered and that non-availability of the material, which Mr. Nayar at that time said to be existing and now states that even at that time he did not see, amounted to a material irregularity for which the order confirming can and should be recalled by this court sou motu.

13. For the aforesaid reasons, I recall the order dated May 25, 1993, set aside the confirmation of the sale and direct that all those who have been participating in

these deliberations and all others, who wish to join in further auction, may participate in the bidding subject to the condition that they will lodge with court bank draft of Rs. 5 lakhs as earnest money or equivalent amount in cash, which will be liable to forfeiture in case the terms of payment, as already advertised in the original advertisement, are not adhered to. Lastly, I may add that the auction purchaser who has already deposited the amount is not required to make any fresh deposit. In case the auction purchaser is not the highest bidder on the further auction, equities with regard to interest on money deposited by it, etc., will be considered by the court at the appropriate stage.