

In Re: Giovanola Binny

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Court : Kerala

Decided On : Apr-03-1996

Reported in : [1999]98CompCas160(Ker)

Judge : K.S. Radhakrishnan, J.

Appeal No. : C.A. No. 226 of 1995 in C.A. No. 178 of 1995 in Report No. 148 and C.A. No. 178 of 1995 in Report No

Appellant : In Re: Giovanola Binny

Judgement :

K.S. Radhakrishnan, J.

1. This court, vide its order dated December 15, 1982, ordered winding up of M/s. Giovanola Binny Ltd. (in liquidation). Thereafter, the official liquidator filed a report regarding the sale of assets of the company in liquidation and the court, vide order dated July 10, 1985, directed the official liquidator to publish notices inviting offers for the purchase of the assets of the company in liquidation. Later, on the basis of various orders of this court, the official liquidator published tender notices in one issue of all editions of two Malayalam dailies and in all the Southern editions of an English newspaper. In response to the notice, 18 tenders for the purchase of the assets of the company were received by the official liquidator on August 23, 1995, with required earnest money deposit of Rs. 2,00,000. The details of the said offers are enumerated in Report No. 150 by the official liquidator. The highest offer was

made by the State Bank of India for Rs. 52 lakhs. There was another offer by the FACT for Rs. 26,76,000, Since the highest offer was made by the State Bank of India, the official liquidator filed Report No. 150 seeking permission of this court to confirm the sale in favour of the State Bank of India.

2. At this juncture, Application No. 226 of 1995 was filed by the FACT seeking a direction to the official liquidator to negotiate with the applicant for the sale of 167.25 cents of land in Survey Nos. 1037/1, 2 and 3, 1038/2 and 3, 1040/3 and 4 and 1539/1 and 2 of Rameswaram Village. According to the applicant, the above mentioned property is a part of the land handed over to the applicant-company pursuant to the orders of this court. It was further averred that the said land is highly essential for the beneficial enjoyment of the remaining part of the land. It was stated that the applicant is willing to offer the same price which was offered by the State Bank of India and, therefore, the applicant prayed that direction may be issued to the official liquidator to sell the land to the applicant on the applicant paying the same price which the State Bank of India have quoted for the land.

3. An additional affidavit was filed by the applicant stating that the applicant is willing to offer Rs. 66.09 lakhs for the properties mentioned above. Therefore, it is prayed by the applicant that a direction may be issued to the official liquidator to negotiate the sale of the land between the applicant and the State Bank of India and not to foreclose the applicant from participating in the further sale of the land.

4. A counter-affidavit has been filed by the State Bank of India. It was stated that there was no justification to consider the request of the FACT. It was further stated that the official liquidator conducted the auction after giving wide publicity and the applicant-FACT participated in the said auction and quoted only Rs. 26.76 lakhs. At the same time, the State Bank of India quoted a very reasonable rate of Rs. 52 lakhs. It was further submitted by counsel for the State Bank of India that after, participating in the auction which was conducted in public, the FACT has no legal right to offer higher amount to see that the highest offer made by the State Bank of India in a public auction be not accepted. The official liquidator also filed a report stating that the auction was conducted after complying with all the formalities by giving wide publicity and, therefore, there is no justification in not confirming the

sale of the property in favour of the State Bank of India.

5. Counsel for the FACT referred to a decision in Universal Dye-stuff Industries Ltd., In re [1988] 63 Comp Cas 842 (Guj) and contended that adequacy of the price for the property of the company in liquidation is one of the important factors to be taken into consideration by the company court while confirming the sale.

6. Counsel for the State Bank of India, on the other hand, relied on the decision of the Supreme Court in Navalkha and Sons v. Ramanuja Das[1970] 40 Comp Cas 936 ; AIR 1970 SC 2037, and contended that once the court finds that the offer made is reasonable and the price offered is adequate, there is no question of subsequent higher offer being entertained. Counsel also submitted that in the instant case, by the showing of the applicant-FACT itself, it is evident that the offer made by the State Bank of India is just and reasonable. FACT also wanted the sale to be confirmed in favour of the said company on the basis of the offer made by the State Bank of India. In view of the above mentioned circumstances, counsel wanted the sale to be confirmed in favour of the State Bank of India.

7. Counsel for the bank also relied on the decision of the Supreme Court in Kayjay Industries (P.) Ltd. v. Asnew Drums (P.) Ltd., AIR 1974 SC 1331, 1335, and contended that it is not as if the court should go on adjourning the sale till a good price is got. The Supreme Court, in the above mentioned decision, stated :

'.. . But it is not as if the court should go on adjourning the sale till a good price is got, it being a notorious fact that court sales and market prices are distant neighbours. Otherwise, decree holders can never get the property of the debtor sold. Nor is it right to judge the unfairness of the price by hindsight wisdom. May be, subsequent events, not within the ken of the executing court when holding the sale, may prove that had the sale been adjourned a better price could have been had. What is expected of the judge is not to be a prophet but a pragmatist and merely to make a realistic appraisal of the factors, and, if satisfied that, in the given circumstances, the bid is acceptable conclude the sale. The court may consider the fair value of the property, the general economic trends, the large sum required to be produced by the bidder, the formation of a syndicate, the futility of postponements and the possibility of litigation, and several other factors

dependent on the facts of each case.'

8. I heard counsel on either sides at length. As held by the Supreme Court in *Navalkha and Sons v. Ramanuja Das* [1970] 40 Comp Cas 936 ; [1970] 2 SC] 96, that the condition for confirmation by the court operates as a safeguard against the properties being sold at an inadequate price whether or not it is a consequence of irregularity or fraud in the conduct of sale. It is observed that it is the duty of the court in every case to satisfy itself that having regard to the market value of the property the price offered is reasonable and adequate. This court held in *Thangal (K.S.) (Dr.) v. State of Kerala* [1968] 38 Comp Cas 5 ; [1968] KLT 520, that the condition for confirmation is only a safeguard against irregularity or fraud. Even if a person offers a higher amount since the date of sale, the court is not bound to conduct an enquiry or to set aside the sale.

9. In the above mentioned decision the court held :

'The condition that the sale is subject to confirmation of court is only a safeguard against irregularity or fraud in connection with the sale and against property being sold at an inadequate price and therefore even if a person makes an offer after confirmation of the sale, to purchase the property at a higher amount, the court is not bound to conduct an enquiry or set aside the sale'.

10. However, the Supreme Court in a recent decision in *LICA (P.) Ltd. (No. 1) v. Official Liquidator* [1996] 85 Comp Cas 788 explained the decision in *Navalkha and Sons v. Ramanuja Das* [1970] 40 Comp Cas 936 (SC) and *Radhey Shyam v. Shyam Behari Singh*, AIR 1971 SC 2337. The court held as follows (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, therefore, have to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case. One of the terms of the offer in this case is that even confirmation of the sale is liable to be set aside by the High Court as per Clause 11 of the conditions of

offer. The sale conducted was subject to confirmation. Therefore, mere acceptance of the offer of Mr. Shantital Malik does not constitute any finality of the auction nor would it be automatically confirmed. The appellant offered a higher price even now at Rs. 45,00,000. Keeping in view the interest of the company and the creditors and the workmen to whom the sale proceeds would be applied, the learned company judge was right in exercising her discretion to reopen the auction and directing Mr. Shantilal Malik as well to make a higher offer than what was offered by the appellant. In every case it is not necessary that there should be fraud in conducting the sale, though on its proof the sale gets vitiated and it is one of the grounds to set aside the auction sale. Therefore, the discretion exercised by the learned single judge cannot be said to be unwarranted. Under the circumstances, we are satisfied that the Division Bench of the Calcutta High Court committed manifest illegality in interfering with the order of the learned single judge'.

11. The Supreme Court in the above mentioned decision took the stand, even if there is no fraud or irregularity it is open to the company judge to exercise the discretion to conduct a re-sale so that the most remunerative price should be secured. Keeping in view the interest of the creditors, workmen, etc., the company judge exercised his discretion to reopen the auction. The Division Bench has interfered with the said order passed by the single judge. The finding of the Division Bench was reversed by the Supreme Court and upheld the decision of the learned company judge.

12. The principle laid down by the Supreme Court in the above mentioned decision is applicable to the instant case as well. The question of adequacy of sale consideration is also one of the important factors to be taken note of by the company court. The interest of the secured creditors, unsecured creditors, shareholders, etc., is also a factor to be taken note of by the company judge. Even in the absence of fraud or irregularity it is open to the company judge to exercise his discretion in cases where the court comes to the conclusion that there is every possibility of getting a higher price. In the instant case, it is true, that the FACT had earlier made an offer for Rs. 26.76 lakhs. It is also an admitted fact that the State Bank of India has made an offer for Rs. 52 lakhs. The present offer made by the

FACT is Rs. 66.09 lakhs. There is a difference of about Rs. 14.09 lakhs. The company court, while exercising discretion has to safeguard the interest of the company in liquidation as well as the creditors etc. even if, no irregularity or fraud is alleged or proved.

13. Under the above mentioned circumstances, I am therefore, inclined to direct the official liquidator to reauction the property with wide publicity with upset price as Rs. 66.09 lakhs. I also direct the applicant-FACT to deposit an amount of Rs. 25,000 for meeting the preliminary expenses for conducting reauction. The official liquidator will take expeditious steps to conduct the reauction after settling the terms and conditions. The reauction will be conducted within a period of three months from the date of receipt of a copy of this order.

14. The report and applications are disposed of accordingly.

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