

Manidhari International Vs. O.L. of Jalan Ispat Casting Ltd. and 4 ors.

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Court : Gujarat

Decided On : Mar-13-2006

Reported in : [2008]88SCL272(Guj)

Judge : R.S. Garg and; Bankim N. Mehta, JJ.

Appeal No. : O.J. Appeal No. 15 of 2006 in Official Liquidator Report No. 76 of 2005 in Official Liquidator Repo

Appellant : Manidhari International

Respondent : O.L. of Jalan Ispat Casting Ltd. and 4 ors.

Advocate for Def. : None

Advocate for Pet/Ap. : Pranav G. Desai, Adv. for Appellant 1 and; M.A. Kuwadia, Official Liquidator

Disposition : Appeal allowed

Judgement :

R.S. Garg, J.

1. Admit. The Official Liquidator present in the court waives service of process of notice of admission on behalf of the respondent No. 1. Respondent Nos. 2 and 3 are Secured Creditors. In view of the order proposed to be passed, we do not think

notices are required to be issued to the respondent Nos. 2 to 5. Even otherwise, respondent Nos. 2 to 5 have no stakes in the present matter.

2. The facts for disposal of the present appeal in nutshell are that certain properties of the company under liquidation were sought to be auctioned. There were bidders in different groups. The present appellant made the highest offer for group SB and submitted the earnest money deposit. When the matter came up before the learned Company Judge for confirmation of the sale and acceptance of the offer made by the appellant, certain objections were raised and the learned Company Judge observed that the Official Valuer's report was not proper. The valuation was to be re-done and the property was to be re-advertised for auction and only then, it could be sold. The appellant, though was initially aggrieved by this direction, but at this stage, Mr. Pranav G. Desai, learned counsel appearing for the appellant submitted that the appellant does not press that part of the relief.

3. According to Mr. Desai, learned Company Judge, while directing preparation of the fresh inventory and re-auction of the property, directed that the earnest money deposit paid by the appellant should be retained by the Official Liquidator. According to Mr. Desai, once the sale is not confirmed and there are no lapses on the part of the appellant, then, the appellant is entitled to refund of the earnest money deposit.

4. After hearing the parties, we must observe that the learned Company Judge, though was trying to protect the interest of the company under liquidation, at the same time, went little wrong in issuing direction that the earnest money deposited by the appellant be not refunded to it till fresh offers are received and the sale is made in pursuance to the fresh advertisement/offers.

5. It is trite law that that if an offer made by a group is not accepted and the same is turned down and there are no lapses on the part of the offerer, then, the said offerer would be entitled to refund of money which he has given to the other side.

6. We hereby allow the appeal and direct the Official Liquidator to refund the earnest money to the appellant within 15 days from today. It is further clarified that as and when the property is put for auction, the appellant would be entitled to take

part in the same. The appeal is allowed.

7. In view of the above order, no orders are required on O.J. Civil Application No. 54/06.

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