

i.F.C.i. Limited Vs. the Official Liquidators and ors.

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Court : Kolkata

Decided On : Apr-05-2005

Reported in : IV(2005)BC571

Judge : Bhaskar Bhattacharya and ;Jayanta Kumar Biswas, JJ.

Appeal No. : A.C.O. No. 169 of 2004

Appellant : i.F.C.i. Limited

Respondent : The Official Liquidators and ors.

Advocate for Def. : Susanta Dutta, Adv.

Advocate for Pet/Ap. : D.N. Sharma and ;A. Roy, Advs.

Disposition : Application dismissed

Judgement :

Bhaskar Bhattacharya, J.

1. This is an application for variation/modification/ clarification of the order dated February 22, 2002 passed by a Division Bench of this Court by which the said Division Bench set aside the order dated 1st February, 2002 passed by the learned Company Judge confirming sale of a company in liquidation.

2. The said Division Bench on hearing the learned Counsel for the parties and after going through the materials on record came to the conclusion that the parties or the intending purchasers did not get opportunity to go through the valuation report nor was the valuation report placed before the learned Company Judge. According to the Division Bench, having regard to the valuation report submitted in the case which was not brought to the notice of the Court or the parties, it would appear that the sale at a sum of Rs. 85 lakh would be too inadequate and low. The Division Bench further was of the view that the sale of a big paper mill which was subject matter of confirmation could not be made without giving wide publicity all over India. The Division Bench further found that learned Company Judge did not fix a reserve price for sale of the company in liquidation and that fact also weighed with the Division Bench in interfering with the order passed by the learned Company Judge confirming the sale.

3. Ultimately, the Division Bench set aside the sale and directed the Official Liquidator to return the money with interest to the purchasers. The learned Company Judge was requested to take immediate steps for fresh advertisement by publishing the same at least in three newspapers having circulations all over India. The Division Bench further observed that it would be open to the learned Company Judge to direct that the Company in question can be sold only as a going concern.

4. Pursuant to the aforesaid order when the matter again went back to the learned Company Court, further publications were made by the Official Liquidator all over India and several intending purchasers participated in the sale proceedings before the Company Judge from time-to-time. On 13th August, 2004, the said matter further appeared before the learned Company Judge when after opening the brief the learned Company Judge held that the offers made were thoroughly inadequate and insufficient. According to the Company Judge, the offers made did not match the reserve price nor were those sufficient to meet up the dues of both the secured and unsecured creditors. At that stage, the learned Counsel appearing on behalf of the petitioner suggest that the assets should be sold on 'as is where is' basis and the learned Counsel appearing on behalf of the W.B.F.C. supported such contention. In such circumstances, the learned Company Judge adjourned the

sale with liberty to the secured creditors either to procure a suitable offer from the intending bidders on the basis of the reserve price fixed by the Court or to apply before the Court of Appeal for modification of the earlier order as if there was a mandate given by the appellate Court to sell the company only as a going concern.

5. Pursuant to such liberty given by the learned Company Judge, the present application has been filed thereby praying for variation of the earlier order by giving direction upon the Company Court to sell the property on 'as is where is' basis so that better price could be fetched.

6. After hearing the learned Counsel for the parties and after going through the present application we find that this application for review is thoroughly misconceived. Once an Appellate Court set aside the order of confirmation of sale on the ground of illegality or irregularity and remanded the matter back to the Company Court with direction to give wide publicity of sale after fixing a reserve price, it is for the Company Court to proceed afresh in accordance with the law after observing mandatory directions given by the Appellate Court.

7. It appears from the order passed by the Appellate Court that the said Court set aside the order of confirmation of sale on the ground of lack of wide publicity and also on the ground of non-fixation of reserve price coupled with the fact that valuation report was not placed before the Court. In the said order setting aside the sale, the Appellate Court has further made it clear that 'it would be open to the learned Company Judge to direct that the Company in question can be sold only as a going concern'. We find that the language used by the Division Bench made it abundantly clear that it merely gave liberty to the Company Court to adopt such course but there was no compulsion that the Company Judge 'should direct sale of the company only as going concern and not otherwise'.

8. Therefore, it was for the Company Court to read the order of the Division Bench in proper perspective and to proceed accordingly. Once the appeal is disposed of and the matter is remanded to the original Court, the original Court cannot ask one of the parties to approach the Appellate Court for reconsideration of the order of the remand as if the earlier order passed by the Appellate Court was ineffective or

not fruitful according to its estimation. It is for the Trial Court to construe the order of remand and to implement it but it cannot ask the parties to move the Appellate Court either to modify it for making the same more effective or to bring clarification from the Appellate Court for the purpose of knowing the real intent of the order of remand.

9. We have already indicated that the order of the Appellate Court was as clear as the noon day and it requires no clarification and, as such, we do not find any reason to either modify or clarify the order passed by the Division Bench. We are of the view that there is rather no scope of review of a concluded order passed by the Appellate Court on the aforesaid ground. The application is, thus, dismissed.

Xerox certified copy of this judgment/order be supplied to the parties within a week.

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