

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.9.2012

CORAM

THE HON'BLE MR. JUSTICE P.JYOTHIMANI
AND
THE HON'BLE MR. JUSTICE P.DEVADASS

O.S.A. Nos. 222 and 223 of 2012

Mettur Textiles Mill Quarters Residents
Welfare Society, having office at
LGC-1, Mill Quarters, Salem Camp
Mettur Dam T 4, Salem District
rep. by its President, Mr.Jothi Vallal .. Appellant
in both Appeals

Vs.

1.The Official Liquidator
High Court, Madras
(as the liquidator of M/s.Mettur
Textiles Industries Limited in liquidation)
29, Rajaji Salai, Chennai T 600 001.

2.V.S.Enterprises
14/1-134, V.S.Arcade, Puthusmpalli
Mettur Dam T 635 403
Salem District.

3.Mettur Textile Mills Employees Union
and Salem Mavatta AITUC Mill
Tholilalarkal Sangam, Regd.No.706/SLM
rep. by its Secretary, P.Jayakumar
268/23, Karumlaikudal
Mettur Dam R.S. 636402 .. Respondents
(R3 impleaded vide even order .. in both Appeals
dated 10.8.2012 in M.P.No.3/2012
in O.S.A.No.222 of 2012 and M.P.No.2/2012
in O.S.A.No.223 of 2012)

Prayer: Appeals against the common order passed by the learned Single Judge dated 8.3.2012 in Company Application Nos.242 and 243 of 2012 in Company Petition No.125 of 1988.

For Appellant

:
Mr.P.H.Aravind Pandian,
Senior Counsel

For Respondents

:
Mr.B.Dhanaraj
for 1st respondent

Mr.E.Om Prakash
for Mr.R.Abdul Mubeen
for 2nd respondent

Mr.M.R.Jothimani
for 3rd respondent

JUDGMENT

P. Jyothimani, J.

These appeals are directed against the order of the learned single judge in dismissing the applications filed by the appellant, to wit Mettur Textiles Mill Quarters Residents Welfare Society, on the ground that the appellant/ society has been whiling away its time from 2009 when an advertisement was issued for sale of properties of the company under liquidation relating to Item No. 7 comprising of 33.03 acres of land and has approached the court belatedly when the sale was confirmed by the company court in favour of the second respondent, being the highest bidder, for a sale consideration of Rs. 12,50,00,000.

2. Succinctly put, the facts leading to the filing of these appeals are that the Mettur Textiles Industries Ltd., which has been wound up, was taken over by the official liquidator and sale has been effected in respect of various lots of properties and adjudication in respect of the claims of the workmen and other creditors is being done by the official liquidator. These appeals relate to one of the properties which is listed as Item No. 7, which is land to the extent of 33.03 acres situated in Mettur Dam, Salem District. It is seen that from the year 2008 onwards, through the official liquidator, the company court has taken steps for the purpose of sale of the said item of land and there were no bidders in respect of the said property.

3. It appears that by an advertisement dated February 13, 2012, published in the newspapers on February 19, 2012, by the official liquidator as per the direction of the company court, item No. 7 an extent of 33.03 acres of land was included in the auction notice by fixing the upset price at Rs. 6,11,64,000. It is based on the said advertisement various persons, including the second respondent, participated in the auction conducted by the company court, and

ultimately the second respondent was declared to be the highest bidder for the sale consideration of Rs. 12,50,00,000 and the sale has been confirmed by the company court in the order dated March 8, 2012.

4. It was on the brink of auction process the appellant has filed two applications, to wit (i) C. A. No. 242 of 2012 for the purpose of grant of stay of the auction notice dated February 19, 2009 ; and (ii) C. A. No. 243 of 2012 to enjoin the official liquidator from bringing the said property, to wit 33 acres of land situated at Mettur Dam, Salem District, for sale in future, and these applications came to be dismissed by the learned judge under the impugned order, as stated above.

5. The official liquidator has filed his report. In the report, he has clearly stated that the bidding was effected in the court and even though the upset price was fixed at Rs. 6,11,64,000 various people participated and ultimately the second respondent has raised the bid to Rs. 12.50 crores and the court has declared the second respondent as the highest bidder and confirmed the sale in its favour. The official liquidator has also stated that around 3,000 claims have been received from the creditors of the company under liquidation and adjudication process is on.

6. It is no doubt true that the learned single judge has stated that the applications have been filed by the appellant behind hand. But, on facts, it is beyond any cavil that the appellant, which is stated to be a society registered under the Societies Registration Act, 1860, was incorporated only on February 29, 2012 and after such incorporation, the appellant/ society resolved on March 2, 2012, to authorise its president, who happened to be one of the erstwhile employees of the company under liquidation during 1990, to approach this court regarding the sale of item No. 7 of the auction notice and on hearing the appellant as well as the other parties, the company court has passed an order confirming the sale in favour of the second respondent.

7. The claim of the appellant, as submitted by learned senior counsel appearing for the appellant, that the members of the appellant/ society, being the erstwhile employees of the company under liquidation, are entitled to have a right to participate in the auction has to be rejected out of hand. It is not as if the members of the appellant/ society, who are erstwhile employees, were unaware of the proceedings which were going on before the company court. Having known about the entire situation, which has been going on from the year 2008, suddenly at the time when the sale was about to be confirmed by the company court, the appellant/ society got itself incorporated on February 29, 2012 and intervened by filing applications and this itself shows that the attitude of the appellant is not bona fide.

8. Further, as submitted by learned counsel for the second respondent, there have been various contradictions regarding the number of

members of the appellant/ society. The contention of learned senior counsel appearing for the appellant that the members of the appellant/ society, who are erstwhile employees, are numbering 919, is basically contradictory to the stand taken by the appellant/ society itself on different occasions. In the affidavit filed by the appellant in support of the above said applications, the appellant has stated that it has got 87 members in its association. However, in the grounds of appeals filed before this court, the appellant has chosen to state that as on date there are 169 members in the appellant/ society. On a reference to the application of the president of the appellant/ society, S. Jothi Vallal, it is seen that he is employed presently as a private practitioner and was employed in the company under liquidation as printing master in the year 1990. The business of the company under liquidation was closed in the year 1983 and there was revival in the year 1990 for doing some job work and it appears that the president of the appellant/ society was employed in some of the job works and that status is not sufficient for a person to come to the company court seeking to set aside the sale.

9. The contention of learned senior counsel appearing for the appellant that the learned judge in the impugned order has erroneously referred to a newspaper advertisement dated February 19, 2009 and therefore the impugned order is liable to be set aside, is unsustainable for the simple reason that it is only a typo. What is stated as February 19, 2009, in the impugned order of the learned judge relates to the advertisement dated February 13, 2012, which was published in the newspaper on February 19, 2012 and this cannot be taken advantage of by the appellant for the purpose of questioning the validity of the order.

10. Law is well-settled that in cases where the company court sells the properties in accordance with various provisions of the Companies Act and the Rules framed there under, such sale can be interfered with only in cases where there is a total irregularity or the sale is effected against the provisions of the Companies Act or the Rules framed there under. On the factual matrix, it is not the case of the appellant that there has been any irregularity or the sale has been effected in gross violation of the provisions of the Companies Act. The only argument put forth by learned senior counsel appearing for the appellant is that the appellant/ society is now prepared to enhance the bid amount to Rs. 15 crores and a qualification is made by learned senior counsel stating that the society is prepared to purchase the entire 33.03 acres of land for Rs. 15 crores or 8 acres of land, which is stated to be the portion to which they are entitled to, for a proportionate amount fixed by the court. Such contention cannot be accepted by any stretch of imagination. When once the company court, after following due process of law and giving wide publicity in the newspaper both-English as well as vernacular, had confirmed auction in the court, it is not for this court to interfere unless there is gross illegality or irregularity or violation of the statutory provisions.

11. It is true that the company court while approving the sales takes note of the interest of the creditors and the workers who are the persons having right to have the value of the property ascertained in a proper manner, but it does not mean that anybody who is not participating in the auction can suddenly come to the court and raise the bid amount for the purpose of setting aside the sale. If this practice is allowed, the proceedings before the company court will never attain finality. In the absence of any illegality, we are of the view that there is nothing to be interfered with the order of the learned single judge. Simply because there has been a typo in the order of the learned judge that will not vitiate, in our considered opinion, the steps taken by the company court for the purpose of confirmation of sale.

12. The reliance placed on a decision of a Division Bench of this court in *T. Narayanan v. Official Liquidator* [2010] 104 SCL 1 (Mad.) by learned senior counsel appearing for the appellant is not applicable to the present case. The appellant in that case is the son of one of the ex-directors of the company under liquidation and he participated in the auction, questioned the valuation, and also non-payment of earnest money deposit by the other side and raised his bid and it was in those circumstances on the factual matrix the Division Bench of this court has come to the conclusion that there is irregularity in the conduct of the sale by the company court and the Division Bench has interfered. But that is not at all the issue in this case.

13. The further reliance placed by learned senior counsel for the appellant on the judgment of the Supreme Court in *FCS Software Solutions Ltd. v. La Medical Devices Ltd.* [2008] 85 SCL 401 (SC), is also not applicable to the facts of the present case. Learned senior counsel strongly relied on paragraph 33 of the said judgment, which is as follows :

"In *Union Bank of India v. Official Liquidator*, High Court of Calcutta [2000] 101 Comp Cas 317 ; [2000] 5 SCC 274, this court observed that in auction sale of the property of the company which is ordered to be wound up, the company court acts as a custodian for the interest of the company and its creditors. It is the duty of the company court to satisfy itself as to reasonableness of price by disclosing valuation report to secured creditors of the company and other interested persons. It was further held that the court should exercise judicial discretion to ensure that sale of property should fetch adequate price. For deciding what would be reasonable price, valuation report of an expert is essential. The company judge himself must apply his mind to the valuation report. The court observed that the High Court did not interfere with the auction sale on the ground of sympathy for the workers which was not proper. The auction sale was, therefore, set aside by this court and the official liquidator was directed to resell the property after obtaining fresh valuation report and after furnishing copy of such report to secured creditors."

14. The Supreme Court has held that the company court has to consider the propriety of the valuation and apply its mind to the valuation report and there is no question of any sympathy towards the workers for the purpose of fixing the value. In the said decision, the Supreme Court has also referred to another judgment in *Divya Mfg. Co. (P.) Ltd. v. Union Bank of India* [2000] 26 SCL 280; [2000] 6 SCC 69, by enumerating in paragraph 34 as under :

"In *Divya Manufacturing Co. P. Ltd. v. Union Bank of India* [2000] 102 Comp Cas 66 ; [2000] 6 SCC 69, this court held that even confirmed sale can be set aside. In that case, highest bid by a party was accepted by the court and the sale was confirmed, but before the possession was delivered to the auction purchaser and execution of sale deed, other parties offered much higher price. The High Court required the subsequent bidders to deposit an amount of 25 per cent. which was done. Considering the facts in their entirety, the High Court set aside the confirmation of past highest bid. The said action was challenged in this court."

15. It was held that the court can always interfere with the sale at any point of time even after the sale was confirmed, but before handing over of possession, and that is again not the issue in this case.

16. As stated above, the company court has taken note of the valuation and there is absolutely no averment made by the appellant at any point of time that there has been any illegality or irregularity in the procedure followed by the company court and ultimately, the company court after hearing the appellant has confirmed the sale in favour of the second respondent for a sale consideration of Rs. 12.50 crores and we do not see any reason to interfere with the impugned order of the learned judge.

17. For the foregoing reasons, the appeals stand dismissed. Inasmuch as the official liquidator has stated in clear terms that adjudication process is on, we only hope that the official liquidator shall expedite the process in the interest of the workmen as well as the other creditors. No costs. Consequently, M. P. Nos. 1 and 2 of 2012 in O. S. A. No. 222 of 2012 and M. P. No. 1 of 2012 in O. S. A. No. 223 of 2012 are closed.

(P.J.M.J) (P.D.S.J.)
6.9.2012

Index : Yes
Internet : Yes

sasi

P.JYOTHIMANI,J.
AND
P.DEVADASS,J.

(sasi)