

Karnataka State Financial Corporation

Vs

Micro Cast Rubber & Allied Products (P) Ltd. and Others

Civil Appeal No. 8989 of 1996

(S. C. Agarwal, G. T. Nanavati JJ)

03.06.1996

JUDGMENT

S. C. AGRAWAL, J. –

1. Special leave granted.

2. The Karnataka State Financial Corporation, appellant herein, is a State Financial Corporation established under the provisions of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act"). Respondent 1, a company registered under the Companies Act, set up a unit for the manufacture of rubber and like products. The appellant extended finance to the tune of Rs. 14.15 lakhs to Respondent 1 on 21-3-1981. In August 1981 the unit of Respondent 1 commenced production but from its very inception it continued to incur losses. In order to make the unit viable the appellant, on 14-12-1981, rescheduled the payment of the loan. A further sum of Rs. 1.65 lakhs was sanctioned in March 1984 for the purpose of purchasing a Diesel Generating Set. On 10-10-1986 the appellant extended rehabilitation assistance under the RSR Scheme of IDBI and treating the unit as a sick unit sanctioned a further amount of Rs. 3.93 lakhs. In spite of these facilities Respondent 1 continued to make default in payment of instalments for repayment of the loan. On 23-10-1990 the appellant took over the possession of the unit of Respondent 1 in exercise of the powers conferred on it under Section 29 of the Act. Thereafter the appellant took steps for sale of the unit and for that purpose a number of advertisements were issued inviting offers. No suitable offer was received in response to the first two advertisements. In response to the third advertisement issued in August 1991, five offers were received. Out of them the offer of Shri P.K. Joseph on behalf of M/s. Chemtech Industries for a sum of Rs. 24 lakhs was the highest and the Board of the appellant approved the said offer and decided that the communication for acceptance of the offer should be sent only after 15-10-1991 so as to give an opportunity to Respondent 1 to bring any other offer for a higher amount. Respondent 1 did not bring any offer. But, in the meanwhile, Shri P.K. Joseph withdrew his offer on 30-11-1991. Thereafter Respondent 1 indicated that it would submit a proposal for the revival of the unit but it failed to come up with any concrete proposal. Therefore, a fresh advertisement for the sale of the unit was issued on 25-8-1992. In response to the said advertisement, three offers were received. One offer was of M/s. Chemtech Industries for Rs. 23 lakhs for land, building and machinery. The second offer was of M/s. Prime Inputs (India) Ltd. for a sum of Rs. 18 lakhs in respect of land and building only and the third offer was of M/s. Shakti Rubbers for Rs. 6 lakhs for plant and machinery only. A joint meeting of the offerers was held on 28-9-1992. Respondent 1 was also invited. After considering the said offers, a tentative decision was taken to accept the offers submitted by M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers. Respondent 1 sent a letter dated 21-10-1992 seeking 15 days' time to make payment and submit a proposal for revival of the unit. By letter dated 12-11-1992, further time was sought by Respondent

1 till 15-12-1992. On 4-1-1993, an offer was submitted by Respondent 2 to purchase the entire unit including land, building, plants, furnishing and fixtures for Rs. 25 lakhs. The said proposal of Respondent 2 as well as the offers received earlier were considered by the Board of the appellant and it was decided to accept the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers. On 25-1-1993, agreement was entered for the sale of the entire unit to them. Thereafter, Respondents 1 and 2 filed the writ petition (CWC No. 3591 of 1993) in the Karnataka High Court which has given rise to this appeal. The said writ petition of Respondents 1 and 2 was allowed by the learned Single Judge of the High Court by judgment dated 11-8-1993 whereby all proceedings subsequent to receipt of tenders pursuant to public notice were quashed and the appellant was directed to observe directions 2, 3 and 4 contained in para 22 of the judgment of this Court in Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. [(1993) 2 SCC 279] Writ Appeal No. 3279 of 1993 filed by the appellant against the said judgment of learned Single Judge was dismissed by the Division Bench of the High Court by judgment dated 15-2-1994. Hence this appeal.

3. As indicated earlier, the learned Single Judge, while allowing the writ petition filed by Respondents 1 and 2, has directed the appellant to observe directions 2, 3 and 4 contained in para 22 in the judgment of Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. [(1993) 2 SCC 279] The said directions are as follows : (SCC p. 297)

"(2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

(4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it would be tested and may be accepted."

4. Shri S. Ravindra Bhat, the learned counsel appearing for the appellant, has submitted that in the facts of the present case the said directions had been substantially complied with by the appellant. In this regard, the submission of the learned counsel is that a number of efforts were made to sell the unit of Respondent 1 by issuing advertisements from time to time but no suitable offer was received in response to the first two advertisements that were issued in 1991 and the offer for a sum of Rs. 24 lakhs made by Shri P.K. Joseph on behalf of M/s. Chemtech Industries which was received in response to the third advertisement in 1991 was withdrawn by him on 30-11-1991. Thereafter, Respondent 1 was given an opportunity to bring a better offer or to submit a proposal for revival but it failed to do so and, therefore, a fresh advertisement for sale of the unit was issued on 25-8-1992. In response to the said advertisement, three offers were received and offers submitted by M/s. Prime Inputs (India) Ltd. for land and building and M/s. Shakti Rubbers for plant and machinery were found to be better than that submitted by M/s. Chemtech Industries. When the matter was under consideration, Respondent 2 made an offer on 4-1-1993. The learned counsel has submitted that the

said offer of Respondent 2 was considered by the appellant and it was found that it was not better than the offers received from M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers for the following reasons :

- (a) The offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers envisaged payment of dues of the Karnataka Electricity Board by the offerers, whereas the offer of Respondent 2 proposed the said dues to be paid by the appellant;
- (b) There was shorter time for payment of consideration in the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers inasmuch as the entire consideration was payable within 4 years, whereas offer of Respondent 2 was a conditional offer and payment was to be completed in 5 years after initial commencement of production;
- (c) In the case of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers, down payment of 25% amounting to Rs. 6 lakhs was made. In the case of Respondent 2, only Rs. 2 lakhs was offered, and
- (d) In the case of Respondent 2, no earnest money was paid. All other parties deposited earnest money.

The appellant, therefore, did not accept the offer of Respondent 2 and accepted the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers. It is urged that the High Court was not justified in interfering with the said decision of the appellant.

5. Shri P. Mahale, the learned counsel appearing for Respondent 1, has submitted that the offer of Respondent 2 was much higher than the offers made by M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers inasmuch as Respondent 2 had also offered to pay a sum of Rs. 10 lakhs to Canara Bank in final settlement of dues of Respondent 1 to the said Bank which had a second charge on the land, building and machinery and that this amount of Rs. 10 lakhs is in addition to Rs. 25 lakhs to be paid to the appellant.

6. The directions contained in para 22 of the judgment in Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. [(1993) 2 SCC 279] are in the nature of guidelines for the exercise of the power under Section 29 of the Act. The action of the State Financial Corporation is not liable to be interfered with if it has acted broadly in consonance with these guidelines. In the facts and circumstances of this case, we are of the opinion that directions 2, 3 and 4 in these guidelines had been substantially complied with by the appellant. There was compliance with direction 2 inasmuch as before issuing the first advertisement for sale of the unit in March 1981 the unit had been evaluated at Rs. 28 lakhs. Keeping in view the various offers that have been received, it cannot be said that the said evaluation was improper. Directions 3 and 4 were also fulfilled inasmuch as Respondent 1 was made aware of the various offers that had been received in response to the advertisements that were issued from time to time and Respondent 1 was given sufficient opportunity to submit proposal for revival of the unit or to obtain higher offers. The only question is whether in accepting the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers the appellant has rejected the higher offer of Respondent 2. As pointed out earlier, the offer made by Respondent 2 was not accepted by the appellant for the reasons that on proper evaluation it was found that it could not be regarded higher than that made by M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers because it was found that the offer made by Respondent 2 envisaged the payment of dues to the Karnataka Electricity Board by the appellant, whereas the offers made by M/s. Prime

Inputs (India) Ltd. and M/s. Shakti Rubbers envisaged payment of such dues by the offerers. It was also found that there was shorter time for payment of consideration in the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers inasmuch as under the said offers the entire consideration is payable within 4 years, whereas in offer of Respondent 2 the payment is to be completed in 5 years after initial commencement of production. Furthermore, it was found that in offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers, down payment of 25%, amounting to Rs. 6 lakhs, was being made, while in case of Respondent 2 only Rs. 2 lakhs was offered. Moreover, in the offer of Respondent 2 no earnest money was to be paid, while earnest money was to be deposited by other offerers. As regards the undertaking by Respondent 2 to pay Rs. 10 lakhs to Canara Bank in final settlement of the dues of Respondent 1, it may be stated that the said liability towards Canara Bank is secured by second charge on the land, plant and machinery that was being sold by the appellant. The said sale by the appellant was subject to the said charge. Every purchaser was bound to discharge the said liability of the Canara Bank and the offer of payment of Rs. 10 lakhs by Respondent 2 to Canara Bank does not, therefore, enhance the value of the said offer.

7. In the matter of a sale by the State Financial Corporation in exercise of the power conferred on it under Section 29 of the Act the scope of judicial review is confined to two situations, namely, (1) where there is a statutory violation on the part of the State Financial Corporation, or (2) where the State Financial Corporation acts unfairly, i.e., unreasonably. While exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation. [See : U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd. [(1993) 2 SCC 299], SCC at p. 306.] It has not been pointed out that there is any statutory violation on the part of the appellant in accepting the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers and in rejecting the offer of Respondent 2. Nor can it be said that the action of the appellant in not accepting the offer of Respondent 2 and accepting the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers was unfair or unreasonable. The High Court was, therefore, not justified in interfering with the action of the appellant in accepting the offers of M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers for the sale of the unit of Respondent 1. The writ petition filed by Respondents 1 and 2 is, therefore, liable to be dismissed.

8. During the pendency of this appeal in this Court, Respondent 1 had placed before the Court an offer made by M/s. Sunny Brooks to purchase the unit for Rs. 28 lakhs. The said offer cannot be said to be substantially higher than the offers made by M/s. Prime Inputs (India) Ltd. and M/s. Shakti Rubbers in September 1992 so as to justify interference with the sale by the appellant in favour of the said offers. We are, therefore, not inclined to uphold the impugned judgment of the High Court in view of the said offer.

9. In the result, the appeal is allowed, the impugned judgment of the Division Bench of the High Court dated 15-2-1994 as well as the judgment of the learned Single Judge dated 11-8-1993 are set aside and writ petition filed by Respondents 1 and 2 is dismissed with costs.