

**SUPREME COURT OF INDIA**

IFCI Ltd.

Vs.

Vishnu Kant Gupta

C.A.No.4944 of 2008

(C.K. Thakker and D.K. Jain JJ.)

08.08.2008

**JUDGMENT**

**C.K. Thakker, J.**

1. Leave granted.

2. The present appeal is directed against the order passed by the Division Bench of the High Court of Judicature at Allahabad on May 21, 2007 in Special Appeal No. 232 of 2007. By the said order, the Division Bench allowed the appeal filed by Vishnu Kant Gupta-first respondent herein and set aside the order passed by the Company Judge on February 12, 2007 in Miscellaneous Company Application No. 2 of 1993.

3. The facts giving rise to the present appeal are that Champaran Sugar Company Limited was in financial doldrums. Proceedings had been initiated under the *Sick Industrial Companies (Special Provisions) Act, 1985* and Board of Industrial and Financial Reconstruction (BIFR), by its order dated June 28, 1993, held that there was no possibility of rehabilitation of the Company and the Company must be ordered to be wound up. Recommendation was made to that effect by BIFR and it was forwarded to the High Court of Allahabad. Pursuant to the said recommendation, the High Court passed an order for winding up of the Company on September 5, 1994. An Official Liquidator was appointed under the *Companies Act, 1956*.

4. On January 4, 2000, the High Court directed the Official Liquidator to take appropriate proceedings for sale of Barachakia and Chanpatia property of the Company in liquidation. An advertisement was issued and tenders were invited. On January 31, 2001, the matter was taken up by the Company Judge. On behalf of one Hanuman Industries (India), its counsel Ms. Geeta Luthra stated that the Hanuman Industries was prepared to pay Rs.3.51 crores. In support of the said bid, three bank drafts totalling Rs.10 lakhs were deposited. Vishnu Kant Gupta, respondent No. 1 herein had also made offer of Rs.3.51 crores payable in four equal quarterly instalments on condition that the possession of the factory be given by the Official Liquidator upon payment of first instalment and on furnishing bank guarantee for the

remaining amount. The matter was negotiated with both the parties. According to IFCI, valuation given by respondent No. 1 was 'slightly lower' and correct valuation should be Rs. 4,16,000/-. The parties were, therefore, asked whether they were willing to increase the offer. M/s Hanuman Industries offered Rs.3.91 crores and Vishnu Kant Gupta finally offered Rs.5 crores payable in two quarterly instalments, i.e. in six months. The Company Judge having regard to all the facts and circumstances held that the offer of Vishnu Kant Gupta was adequate and should be accepted. Accordingly offer of Vishnu Kant Gupta was accepted.

5. Before the period of three months fixed for the payment of first instalment could expire on April 30, 2001, two Writ Appeals were filed against the order passed by the Company Judge and by orders dated February 7, 2001 and March 13, 2001, interim stay was granted by the Division Bench and operation of the order by the Company Judge was stayed. It further appears that nothing was done thereafter either by the parties or by the Division Bench of the High Court and both the matters remained pending. For about six years, the appeals remained pending and stay operated. As late as on December 5, 2006, both the matters appeared on Board. Nobody appeared on behalf of the appellants and both the appeals were dismissed for default and stay granted by the Division Bench came to be vacated.

6. After the dismissal of appeals and vacation of stay, notice was issued to Vishnu Kant Gupta on February 8, 2007 since he was the highest bidder. He was served on February 14, 2007. But even before the service of notice, he came to know about the dismissal of appeals and vacation of stay order and he deposited an amount of Rs. 1.50 crores on February 9, 2007. On February 12, 2007, he offered Rs. 1.55 crores by a bank draft and also gave an undertaking to pay Rs. 2 crores within three days. Meanwhile, however, other persons also gave offers. One JHV Sugar offered Rs. 5.21 crores. Similarly, Shiv Shakti Chini Mills Pvt. Ltd. offered Rs. 6 crores. Likewise, Sanjeev Kumar Chawdhary offered Rs. 6.50 crores. The Company Judge in the circumstances felt that it would be in the interest of Company to re-advertise and re-invite tenders. Accordingly, he passed an order for re- advertisement of tenders and re-invitation of offers.

7. The respondent herein was very much aggrieved by the order passed by the Company Judge. He felt that his offer of February, 2001 was the highest and more than six years had passed. Even according to Company Judge, the offer made by the first respondent in 2001 was 'reasonable' and hence it was accepted and there was no ground to interfere with the said action and the order passed by the Company Judge was illegal. He, hence, preferred an appeal against the order of the Company Judge. The Division Bench of the High Court considered the facts and circumstances of the case and held that the grievance of the appellant was Well-founded and the Company Judge was not justified in setting aside the highest offer made by the respondent and accepted by the Company Judge. The Court noted that the respondent No. 1 had not paid the amount, but it was because of stay granted by the Division Bench in February, 2001. When appeals were dismissed, respondent No. 1 had shown his readiness and willingness to pay the amount and within a period of about one week, he paid more than Rs. 3 crores and also gave an undertaking to pay balance amount of Rs. 2 crores within three days. The Division Bench, therefore, held that at the most the first respondent should pay interest @ 10% from December 5, 2006 when the appeals were

dismissed up to February 9, 2007 when the respondent No. 1 made first payment of Rs. 1.50 crores. The said amount came to about Rs. 10 lakhs.

8. Accordingly, respondent No. 1 paid Rs. 5 crores as per the bid accepted by the Company Judge and Rs. 10, 40,000/- towards interest as ordered by the Division Bench of the High Court. Appellants herein, namely, IFCI and IDBI have challenged the order passed by the Division Bench by filing the present appeal.

9. Notice was issued by this Court on August 27, 2007. The respondents appeared and waived service. Time was granted to file affidavit in reply as well as rejoinder. By way of ad interim relief, status quo as on that day was also granted. Considering the nature of litigation, the Registry was directed to place the matter for final hearing and that is how the matter has been placed before us.

10. We have heard the learned counsel for the parties.

11. The learned counsel for the appellants contended that the Division Bench of the High Court was wholly wrong in setting aside the order passed by the Company Judge. It was submitted that the Company Judge was right in setting aside the sale and in inviting fresh offers. It was also submitted that the first respondent had paid 'paltry amount' of Rs. 10 lakhs before six years and the Division Bench was not justified in directing the Official Liquidator to hand over possession of the Unit for the amount on which the auction was undertaken in January, 2001 when no payment was made by the first respondent for a pretty long time. It was also submitted that for about six years, the respondent had not done anything. Apart from the fact that he had not made payment to the Official Liquidator, he had also not shown his readiness and willingness by depositing the amount in the Company Court so that it could be invested in any nationalized bank and could earn interest. Resultantly, almost the entire amount remained with the purchaser and now he wants to take advantage though much more attractive and higher offers have already been received by the Official Liquidator.

12. Relying on various decisions of this Court, the counsel submitted that as per settled law, acceptance of offer by the highest bidder does not confer vested right in him to get the property. It is not only the power, but the duty of the Company Court to ensure that proper, adequate and reasonable price is fetched in respect of the property which is to be sold in public auction. It is in the interest of the Company, its shareholders, creditors, workers as well as in larger public interest. It was also submitted that this Court has held that even if sale is confirmed by a Court and it has been brought to the notice of the Court that property has not fetched proper, adequate and reasonable price, even confirmed sale can be set aside. [*Divya Manufacturing Company v. Union of India & Ors.*<sup>1</sup>].

13. The appellants herein are secured creditors. The said fact ought to have been taken into consideration by the Division Bench. As the impugned order is not in consonance with well-established principles of law, the appellants are constrained to approach this Court. It was, therefore, submitted that the appeal deserves to be allowed by setting aside the order passed

by the Division Bench of the High Court by restoring the order of the Company Judge directing him to expedite the process of re-advertisement and sale of property.

14. The learned counsel for the first respondent, on the other hand, contended that admittedly auction was held in January, 2001. The highest bid of the first respondent was for Rs. 5 crores which was accepted by the Company Judge. The first respondent was prepared to pay the entire amount as per the terms and conditions of the bid by the Company Judge.

“There was no default on his part. Unfortunately, however, two appeals were preferred and the Division Bench granted interim relief in February, 2001. It was because of the interim order passed by the Division Bench of the High Court that the first respondent could not pay the amount. For the act of Court, the first respondent should not suffer. When the appeals were dismissed for default and interim relief was vacated, immediately, he made part payment and also stated that he would be paying the remaining amount within a very short period. If after six years, someone comes forward and says that he is inclined to pay higher amount, sale cannot be set aside on such ground. The counsel submitted that the decisions on which reliance has been placed by the appellants, support the case of the first respondent that though it is the duty of the Court to ensure that the property fetches reasonable and adequate price, it is equally well-settled that once the Court finds that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of sale.”

15. In the instant case, the facts clearly reveal that initial offer of the first- respondent was for Rs.3.51 crores, but after negotiations, it was the first respondent who had taken it up to Rs. 5 crores which was accepted. In the circumstances, the order passed by the Division Bench is strictly in accordance with law and no interference is called for.

16. It was also submitted that the Division Bench has considered the fact that after dismissal of appeal, the first respondent ought to have made payment immediately and since there was a gap of about three months, the Division Bench directed the first respondent to pay interest @ 10% which came to Rupees ten lakhs. The said amount has been paid by the first respondent. But even if this Court feels that the said amount is not adequate, an appropriate direction may be issued so that additional amount as this Court deems fit can also be paid by the first respondent.

17. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. So far as principles relating to auction sale and confirmation thereof are concerned, the law is well-settled. Very recently, in *FCS Software Solutions Ltd. v. LA Medical Devices Ltd. & Ors.*<sup>2</sup> we have elaborately dealt with all these principles and it is not necessary to burden this judgment by referring to all the cases by reiterating the said principles.

18. On the facts and in the circumstances of the case, however, one very eloquent fact cannot be lost sight of. Highest bid of Rs. 5 crores by respondent No. 1 was accepted by the

Company Judge on January 31, 2001. But the record discloses that an amount of Rs. 10 lakhs only had been paid by the successful bidder-respondent No.1. Ordinarily, when the highest bid of intending purchaser has been accepted, he is required to pay 25% of purchase-price immediately. It had not been done. The amount was substantial inasmuch as the highest bid was of Rs.5 crores and the first respondent was required to deposit an amount of Rs.1.25 crores. Even thereafter, nothing was done by him. Thus, neither 25% amount (1.25 crores) nor 75% amount (3.75 crores) was paid by him. True it is that in February and March, 2001, stay was granted by the Division Bench, but we cannot ignore the fact that the price quoted by the first respondent of Rs. 5crores was in January, 2001. Had the amount been paid at the relevant time by the first respondent or had it been deposited in any nationalised Bank, it would have earned a sizeable interest which has not been done. After the stay was vacated in December, 2006, payment was made by the first respondent only in 2007, i.e. after more than six years.

19. In the circumstances, though we agree with the learned counsel for the first respondent that higher offer of Rs. 6.5 crores in 2007 cannot invalidate highest offer of first respondent of Rs. 5 crores made in January, 2001, but at the same time, we cannot also be oblivious and unmindful of the fact that out of Rs. 5 crores in January, 2001, the first respondent had parted with a negligible amount of Rs. 10 lakhs only at that time. Before the Division Bench it was argued on behalf of the present appellants that even if the Court is of the view that the sale in favour of respondent No. 1 should not be set aside, he should be ordered to pay 18% interest from 2001 to 2007. The Division Bench observed that such amount of interest would come to about Rs. 10 crores. We appreciate that in view of the above fact, the Division Bench was justified in not accepting the prayer of the appellants herein and not directing the first respondent to pay additional amount of Rs. 10 crores. But we are also of the view that the Division Bench was wrong and not at all justified in ordering payment of interest only from December, 2006 to February, 2007. The admitted position is that the first respondent had paid only Rs. 10 lakhs as against Rs. 5 crores which was also equally relevant and important factor. In our considered opinion, while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, we have to bear in mind the said fact as well which is very important, relevant and material.

20. On overall considerations and for the reasons stated hereinabove, in our judgment, ends of justice would be served if we direct that sale in favour of first respondent be confirmed with condition that the first respondent will pay an additional amount of Rs. three crores. It will be over and above the payment which has been made by him. Such payment will be made within a period of three months. If the payment is not made as per this order, the first respondent will not be entitled to claim any right on the basis of the bid made and accepted on January 31, 2001 and fresh auction will be conducted as per the order of the Company Judge. The appeal is disposed of accordingly. In the facts and circumstances of the case, there will be no order as to costs.

<sup>1</sup>(2006) 6 SCC 69

<sup>2</sup>JT (2008) 7 SC 499