

SUPREME COURT OF INDIA

Archean Granites Ltd.

Vs.

RPS Benefit Fund Ltd.

C.A.No.2354 of 2010

(R.V.Raveendran and R.M.Lodha JJ.)

09.03.2010

ORDER

1. Leave granted. Heard the counsel.

2. The first respondent Company ('Company' for short), was the owner of an odd shaped (triangular) plot of land bearing No.23, G.N. Chetty Road, T. Nagar, Chennai measuring 9315 sq. ft. The first respondent had mortgaged the said property in favour of Bank of Madura Ltd. in the year 1998 for a loan of Rs.60 lakhs. The first respondent decided to sell the said property to pay its depositors and the secured creditor. It took out advertisements on 22.11.1998 and 21.3.1999 for sale of the property. After considering the responses, on 22.4.1999, the Board of Directors of first respondent passed a resolution to sell the said property to the appellant for a consideration of Rs.1.65 crores and entered into an agreement of sale with appellant on the same day. In pursuance of it, the first respondent, under a Sale Deed dated 13.8.1999, sold the said property to the appellant herein for a consideration of Rs.1.65 crores. The sale deed recited that out of the sale price, Rs.95,80,275/- was paid to the vendor (first respondent); and as the property was subject to a mortgage in favour of Bank of Madura Ltd, Rs.69,19,725/- was retained for payment to the said Bank towards full and final settlement of the dues of the vendor.

“On 9.9.1999, the appellant paid Rs.10 lakhs towards the Bank's dues. The appellant offered the balance amount due to the Bank by a demand draft under cover of its letter dated 17.9.1999 with a request to the Bank to accept the same and discharge the mortgage.”

3. In the meanwhile in July, 1999, Company Petitions No.233 to 238 of 1999 were filed against the first respondent in the Madras High Court for winding up. By order dated 7.9.1999, the High Court appointed the Official Liquidator as the Provisional Liquidator, to take over the assets of the company into custody. In view of the pendency of the liquidation proceedings, the Bank refused to accept the balance amount and discharge the mortgage. The appellant therefore made an application to the High Court and sought confirmation and

validation of the sale in its favour. It also sought permission to pay the balance money due to the secured creditor and receive the title deeds from the bank.

4. The learned company Judge by order dated 30.4.2002 dismissed the appellant's application. The learned company Judge held that the transfer of the said property was made during the pendency of the petition for winding up; that there was no material to show that the entire sale proceeds had been used to discharge the liabilities of the first respondent company; that the payment of a deficit stamp duty of Rs.23,60,956/- in regard to the sale deed by the appellant without demur, demonstrated that the property was undervalued in the sale deed; and that the transaction was not bona fide.

“Consequently, the learned company Judge held that the sale was void under section 531 A of the Companies Act, 1956 ('Act' for short). The appeal filed by the appellant was dismissed by a Division Bench of the High Court on 7.10.2005.

The said judgment is challenged in this appeal by special leave.”

5. The appellant contended inter alia that it was a bona fide purchaser for value; that the price paid by it was the prevailing true market value having regard to the peculiar shape and size; that when the property had earlier been put up for sale with a minimum bidding price of Rs.2.25 crores, it could not be sold due to want of response; that the sale was made in pursuance of a Board Resolution dated 22.4.1999 and sale agreement dated 22.4.1999, for the benefit of the company and in the interests of the depositors; and that the High Court had misled itself by taking note of subsequent increase in land prices, ignoring the market value on the date of the sale.

6. This Court issued notice on the special leave petition on 27.3.2006. During the pendency of the matter before this Court, there were a series of meetings among the creditor Bank (which by then was succeeded by ICICI Bank, the second respondent herein), the official liquidator, and the appellant to arrive at a mutually acceptable solution. On 20.1.2010, the appellant arrived at an understanding with the secured creditor (second respondent Bank) under which the Bank agreed to receive Rs.2.5 crores from the appellant in full and final settlement of its dues against the total outstanding of Rs.3.8 crores (as on 31.12.2009) provided the entire amount was paid on or before 31.3.2010. At a meeting held on 5.11.2009, the appellant also offered to pay a sum of Rs. two crores to the Official Liquidator representing the first respondent by way of settlement to validate the sale.

7. When the matter had come up for consideration earlier, it would appear that the Official Liquidator was required to ascertain the prevailing market value so that an equitable solution could be found. The official Liquidator had ascertained from the Sub-Registrar (vide Sub-Registrar's letter dated 14.9.2009) that the guideline value for properties situated at G.N. Chetty Road was Rs.7632/- per sq.ft. As per the said guideline value, market value worked out to be Rs.7.11 crores. The official Liquidator also made further enquiries and assessed the current market value was Rs.10.67 crores. The learned counsel for Official Liquidator

submitted that the property could be sold by public auction to secure even a better price for the property. On the other hand, the appellant submitted the relevant date for ascertainment of market value was 13.8.1999. The appellant pointed out that if the present value of amounts invested/incurred by it on the property is calculated (by adding interest at Bank rate to the amounts spent), it would be around Rs.4 crores. He also submitted that the question of auctioning the property does not arise, as the property was already sold to appellant and the order of the High Court refusing to approve the sale was under challenge. It is also contended on behalf of the appellant that though it had a good case on merits, it was willing to settle the matter by paying a lump sum of Rs. two crores to the first respondent to put an end to the litigation. He stated that the same would be in addition to what the appellant has already paid plus what it has to pay to the Bank (Rs.2.5 crores).

8. Having regard to the market value as disclosed by the enquires by the official liquidator, we are of the view that what has been offered may not be adequate. Keeping in view the present value of the amount already spent/incurred by the appellant (that is the consideration plus stamp duty paid with the interest thereon), it would be fair and reasonable if the appellant is required to pay Rs.2.5 crores to the ICICI Bank in full and final settlement of the amount due to the Bank and a sum of Rs.3.5 crores to the Official Liquidator representing the first respondent, in all Rs.6 crores. Having regard to the fact that the issue is being examined with reference to an application under section 531A of the Act, and the facts and circumstances, payments as aforesaid would result in a permanent solution doing complete justice among the parties.

9. In view of the above, we allow this appeal in part and set aside the impugned judgment dated 7.10.2005 of the Division Bench of the High Court confirming the order dated 30.4.2002 of the learned Company Judge. The application by appellant for approval and validation of the sale deed dated 13.8.1999 in its favour is allowed subject to the following:

“7 (a) The appellant shall pay Rs.2.5 crores (Rupees Two and half crores) to second respondent (ICICI Bank) on or before 30th March 2010 in full and final settlement of the mortgage loan of first respondent;

(b) The appellant shall pay Rs.3.5 crores (Rupees Three and half crores) to the official Liquidator representing the first respondent company on or before 30th March 2010, to enable the official Liquidator to disburse the amount in accordance with the direction of the Company Court.

(c) On payment of six crores as aforesaid, the second respondent shall deliver the title deeds of the property to the appellant and discharge the equitable mortgage. On such payment, the official Liquidator shall also deliver possession of the property of the appellant.

(d) If the payments as aforesaid are not made, this appeal shall stand dismissed and the judgment of the High Court shall stand confirmed.