

SUPREME COURT OF INDIA

Shradhha Aromatics P.Ltd.

Vs.

OI of Global Arya Ind.Ltd.& Ors.

C.A.No.4767 of 2011

(G.S. Singhvi and Asok Kumar Ganguly,JJ.,)

24.05.2011

JUDGMENT

G.S.Singhvi, J.,

SLP.No.23849 of 2008

1. Leave granted.

2. The appellant is aggrieved by judgment dated 12.9.2008 of the Division Bench of the Gujarat High Court whereby the appeal preferred by respondent No.2 - Bipin B. Lathia against order dated 12.11.2007 passed by the learned Company Judge in Company Application No. 504 of 2007 was allowed and the Official Liquidator was directed to complete the formalities for execution of the sale deeds in respect of the property belonging to M/s. Global Arya Industries Limited (hereinafter referred to as, "the Company") in his favour.

3. By an order dated 27.4.2006 passed in Company Petition No. 106 of 2002, the learned Company Judge ordered winding up of the Company and appointed the Official Liquidator attached to the High Court as Liquidator of the Company. The proposal submitted by the Liquidator in the form of Report No.162 of 2006 for sale of the assets of the Company including land, building, plant and machinery, furniture, fixtures and all other movables (except records) at L.S. No.202/3P, SIDC Main Road, village Veraval, District Rajkot was approved by the Company Judge and a committee was appointed for conducting the sale. After due deliberations, the committee decided to advertise sale of the assets of the Company. In furtherance of that decision, advertisements were issued in vernacular and English newspapers showing reserve price of the land etc. as Rs.64 lakhs. After considering the bids and further offers made before the Court, the learned Company Judge passed an order dated 30.8.2007 and approved the highest offer of Rs.127 lakhs given by respondent No.2. Soon thereafter, the appellant filed Company Application No. 450 of 2007 for recall of

order dated 30.8.2007 by stating that it was interested in making an offer of Rs.141 lakhs. The learned Company Judge dismissed the application by observing that the revised offer made by the appellant was an afterthought and there was no tangible reason to review the earlier order.

4. Undeterred by rejection of one application, the appellant filed another application, which came to be registered as Company Application No.504 of 2007, for recall of order dated 30.8.2007. After considering the rival submissions, learned Company Judge vide his order dated 27.11.2007 allowed the second application. The relevant portions of that order are extracted below:

"13. If the above conduct of the applicant is to be viewed in light of the latest judgment of the Hon'ble Supreme Court in the case of Divya Manufacturing Company (P) Limited (Supra), it is clear that though the sale was confirmed in favour of respondent No.2, neither the possession of the movable properties was handed over nor the sale deed was executed in favour of respondent No.2. Unless and until these formalities are over, it cannot be said that the transaction is complete and before that, if higher offer is made, the Court would certainly consider and at that point of time, it is to be seen as to whether the earlier transaction is by virtue of fraud. The real criteria is that the property of the Company in liquidation should fetch maximum price and whether the properties can be adjudged on the basis of the offers which are received. Here in the present case, the applicant has offered Rs.1.51 Crores. If that is to be considered as market value then in that case, certainly the offer of Rs. 1.27 Crores made by respondent No.2 and accepted by the Court earlier cannot be said to be an adequate price and hence, the Court is well within its power to reconsider the case. The authorities cited by the learned advocate appearing for the respondent No.2 are confining to the facts of those cases. Even in the case of Divya Manufacturing Company (P) Limited, a distinction was sought to be drawn by submitting that there was condition laid down in the tender document empowering the Court to set aside the sale. Irrespective of the fact whether any such condition is there or not, the Court is well within its power to reconsider its decision especially when higher amount is offered and ultimately, it is in the advantage and benefit of the Secured Creditors and workers.

14. Even the Division Bench of this Court has taken the view in O.J. Appeal No. 80 of 2007 decided on 28.06.2007 where the Learned Single Judge has rejected the application for de- confirmation of sale and while considering the higher offer made by that appellant, since the original successful bidder had increased its offer to match with the offer made by the appellant in the appeal, the matter was accordingly decided.

15. Considering the over all view of the matter and looking to the facts and circumstances of the present case, the Court is of the view that since the present applicant is offering Rs. 1.51 Crores and it is already deposited with the Official Liquidator, there is no reason not to accept the said offer. Therefore, the order dated

30.08.2007 passed by this Court in OLR No. 143 of 2007 is hereby recalled and the sale of Lot No. A of the Company in liquidation confirmed in favour of respondent No.2 is hereby cancelled. The Court hereby confirms the sale of Lot No. A of the Company in liquidation in favour of the present applicant for Rs. 1.51 Crores. Since the entire sale consideration has already been deposited by the applicant with the Official Liquidator, the Official Liquidator is hereby directed to hand over the possession of the movables within one week from today and the sale deed be executed in favour of the present applicant within one week from the date of receipt of the draft of sale deed from the present applicant.

16. Since the respondent No.2 has already paid an amount of Rs. 1.27 Crores, now the said amount is required to be refunded to the respondent No.2. The equity, however, demands that the respondent No. 2 should be adequately compensated by way of interest on the said amount. The present applicant is, therefore, directed to pay interest @ 12% p.a. on the actual amount of the respondent No.2 lying with the Official Liquidator. The calculation be made accordingly and the applicant shall deposit the said amount of interest with Official Liquidator and on deposit of the said amount of interest, the possession of the property would be handed over as well as the sale deed would be executed in his favour. The amount of interest so deposited by the applicant would be refunded to the respondent No.2 along with the amount of Rs. 1.27 Lacs."

5. Respondent No.2 challenged the aforesaid order in O.J. Appeal No.248 of 2007. During the pendency of the appeal, the Division Bench of the High Court gave opportunity to the parties to give higher offers. This is evident from order sheets dated 28.2.2008, 3.3.2008 and 27.3.2008, which read as under:

"DATE: 28.02.2008 It is stated that when the property was auctioned, offer of Rs. 1.51 crore was given by respondent No.4, and option was given to the appellant if he is prepared to pay Rs. 1.51 crores. Counsel for the appellant prays for time to seek instruction from his client, whether appellant is prepared to pay Rs. 1.51 crores. List on 3.3.2008. DATE: 03.03.2008 On 28.02.2008, when some other party offered Rs.1.50 Crores, we gave the option to the appellant to offer similar amount, as the Court felt that preference should be given to the appellant, if similar amount is offered by the appellant. Today, respondent No.1 Shradhha Aromatics Pvt. Ltd. offered Rs.1.61 Crores. Counsel for the appellant prays time to consult his client, whether he can offer the amount similar to which is offered by the respondent No.1 . List it on 05.03.2008.

DATE: 27.03.2008 On 05.03.2008, respondent no.1 was prepared to deposit Rs.1.51 crores. The parties were directed to appear in person in Court and submit their bids. However, today, the appellant has backed out and submits that he does not want to participate in the bidding. Respondent no.1 Shradhha Aromatics Pvt. Ltd. has already deposited an amount of Rs.1.51 crores. Respondent No.1 is, therefore, directed to deposit a demand draft for the balance amount of Rs.10 lakhs within three weeks and thereafter the matter will be taken up for hearing. However, it is made clear that as the

appellant does not want to pay higher amount as has been offered by respondent no.1, he will not be permitted to submit any bid by offering a higher amount hereafter. The appellant submits that he shall only make his submissions on the next date. List it on 22.04.2008."

6. After undertaking the aforesaid exercise, the Division Bench of the High Court considered the question whether the learned Company Judge was justified in reviewing/recalling order dated 30.8.2007 on the ground that the appellant herein had offered better price and answered the same in negative. The Division Bench opined that the confirmed auction sale cannot be set aside merely because subsequently a higher price is offered by one of the bidders.

7. In the special leave petition filed by the appellant, this Court ordered notice on 24.9.2008. After about two years, learned senior counsel appearing for the appellant gave out that his client is ready to deposit an additional amount of Rs.39 lakhs and that will make its bid as Rs.2 crores. After taking note of his statement, the Court passed order dated 4.10.2010 and gave an opportunity to the contesting parties to give fresh bids in sealed envelopes. On the next date of hearing i.e. 10.12.2010, learned counsel for the parties produced sealed envelopes containing the revised bids of their respective clients. The sealed envelopes were opened in the Court and the offers made by the parties were perused. At that stage, Shri Pallav Shishodia, learned senior counsel appearing for the intervenor-cum- promoter - M/s. Chiripal Textile Mills Private Limited submitted that his client is willing to give a better offer. Thereupon, the case was adjourned to 15.12.2010, on which date the following order was passed:

"At the commencement of hearing, Shri Pallav Shishodia, learned senior counsel appearing for the promoter produced before the Court an envelope containing the offer of his client. The envelope was opened in the Court. We have perused the contents thereof. The two envelopes produced by the learned senior counsel appearing for the petitioner and respondent No.2, which were sealed on the last date of hearing were opened in the Court. After perusing the offers, we are prima facie of the view that the property should be put to re-auction. However, before recording any conclusion on the issue, we deem it proper to give an opportunity to the learned counsel for the parties to make their submissions. As requested and agreed by all the learned counsel, the case is adjourned to January 5, 2011. The Court Masters shall reseal all the envelopes and keep the same in safe custody."

On 5.1.2011, the case was adjourned because learned counsel for the parties made a request that their clients may be given an opportunity to submit fresh revised offers. While adjourning the case, the intervenor-cum- promoter was directed to deposit a Demand Draft of Rs.2 crores with the Registrar (Judicial). On 25.1.2011, learned counsel for respondent No.2 made a statement that his client is not willing to give a bid higher than what was offered before the Division Bench of the High Court. Thereafter, the appellant and the intervenor-cum-promoter gave their respective bids. However, the matter could not be finalised because counsel for the intervenor-cum-promoter sought time for two days to give a bid higher than

the bid of Rs.7.5 crores given by the appellant. On 10.2.2011, learned counsel for the intervenor-cum-promoter submitted a note suggesting that his client is willing to offer Rs.7.55 crores. After considering the same, the Court indicated the parties that an order may be passed for public auction of the property. On 11.2.2011, learned counsel for the appellant and intervenor-cum-promoter stated that if the property is to be auctioned afresh, then their clients are not willing to deposit the amount in terms of their revised offer.

8. On 18.2.2011, the Court, after hearing learned counsel for the parties, intervenor-cum-promoter and Gujarat State Industrial Investment Corporation (GSIIC), passed the following order:

"At the commencement of further hearing, Shri S. Ganesh, learned senior counsel appearing for Gujarat Industrial Investment Corporation, submitted that as on date a sum of about Rs.12 crores are due to his client being a secured creditor and it will be in public interest if the Court, instead of remitted the matter to the High Court, may accept the offer made by the intervenor on behalf of M/s. Chiripal Textile Mills Pvt. Ltd. in case it agrees to pay Rs.7.58 crores. Shri Pallav Shisodia, learned senior counsel appearing for the intervenor-cum-promoter, submitted that his client is prepared to offer Rs.7.58 crores but would require three months' time for making payment. In our view, it is not possible to give a long rope to the intervenor-cum-promoter for producing evidence of its willingness to pay Rs.7.58 crores. Therefore, we deem it proper to grant four weeks' time for the purpose. List the case on 1.4.2011 after the category "Adjourned Matters. On the next date of hearing, the Court will decide the issue relating to compensation, if any, which may be awarded to the petitioner, who had deposited Rs.1.61 crores and respondent no.1, who had deposited Rs.1.27 crores. The Registry is directed to keep the amount deposited on behalf of intervenor in a short term fixed deposit of six weeks in a nationalized Bank.. On 9.5.2011, the Court noted that counsel appearing for the intervenor-cum-promoter has produced two bank drafts for a sum of Rs.5.58 crores and Rs.2 lakhs respectively. The same were ordered to be deposited with the Registrar (Judicial)."

9. Shri Amar Dave, learned counsel for the appellant submitted that if the Court is inclined to accept the offer made by intervenor-cum-promoter, then the Official Liquidator may be directed to return the amount deposited by his client with interest. Shri Dhruv Mehta, learned senior counsel appearing for respondent No.2 also made a similar submission and relied upon the judgments of this Court in *Punjab Wirelless Systems Employees' Union v. Winsome Yarns Ltd. and others*¹ and *FCS Software Solutions Ltd. v. La Medical Devices Limited and others*². Shri S. Ganesh, learned senior counsel appearing for GSIIC submitted that the Court may accept the offer made on behalf of intervenor-cum-promoter but may not award interest on the amount deposited by the appellant and respondent No.2 because both the parties had given higher offers after receipt of the initial bids and so far as the appellant is concerned, it had offered to pay higher amount only after finalisation of the bid of respondent No.2. He submitted that GSIIC has first charge on the assets of the Company and there is no reason why it should be deprived of its legitimate dues by directing payment of interest on the

amount deposited by the bidders. Learned senior counsel emphasized that the offer given in the first instance was extremely low and, therefore, the offer of Rs.7.60 crores made by the intervenor-cum-promoter should be accepted.

10. We have considered the respective submissions and carefully perused the record. Ordinarily, the Court is loathe to accept the offer made by any bidder or a third party after acceptance of the highest bid/offer given pursuant to an advertisement issued or an auction held by a public authority. However, in the peculiar facts of this case, we are inclined to make a departure from this rule. Admittedly, total area of the land advertised by the committee is 12,500 square meters and the same is situated in an important district of Gujarat. It is also not in dispute that the area has been substantially developed in last four years. The initial offer made by M/s. Patel Agro Diesel Ltd. was of Rs.83 lakhs and the highest revised offer given before the learned Company Judge was of Rs.127 lakhs. After acceptance of the revised offer by the learned Company Judge, the appellant stepped in and made an offer to pay Rs.141 lakhs. The first application filed by it was dismissed but the second application was allowed and the increased offer of Rs.151 lakhs was accepted by the learned Company Judge vide order dated 27.11.2007. That order did not find favour with the Division Bench, which restored the first order passed by the learned Company Judge. If the order of the Division Bench is sustained, the creditors of the Company are bound to suffer because the amount available for repayment of the dues of the creditors would be a paltry sum of Rs.127 lakhs. As against this, if the offer made by the intervenor-cum-promoter is accepted, the Official Liquidator will get an additional amount of more than Rs.4.25 crores. The availability of such huge amount will certainly be in the interest of the creditors including GSIIC. Therefore, it is not possible to approve the order passed by the Division Bench of the High Court. In a somewhat similar case - FCS Software Solutions Ltd. v. La Medical Devices Limited and others (supra), this Court approved the acceptance of revised bid of Rs.3.5 Crores given by the appellant with a direction to compensate the earlier highest bidder by payment of the specified amount.

11. In the result, the appeal is disposed of in the following terms:

“(i) The impugned order is set aside.

(ii) The offer of Rs.7.60 crores including additional amount of Rs.2 lakhs made by the intervenor-cum-promoter-M/s. Chiripal Textile Mills Private Limited is accepted.

(iii) The Registry is directed to encash the fixed deposits of Rs.7.60 crores and get prepared a demand draft of the total amount including the interest in the name of the Official Liquidator attached to the Gujarat High Court. The latter shall depute an authorised officer to collect the demand draft from the Registry of this Court.

(iv) Within four weeks from today, the intervenor-cum-promoter shall pay Rs.6 lakhs to the appellant and Rs.5 lakhs to respondent No.2 by way of compensation because

on account of pending litigation, they were prevented from utilising the amount deposited with the Official Liquidator.

(v) Within four weeks from the date of receipt of demand draft by the Official Liquidator attached to the Gujarat High Court and production of receipt showing payment of money by the intervenor-cum- promoter to the appellant and respondent No.2 in terms of sub- paragraph (iv) above, GSIIC shall execute sale deed(s) in favour of the nominee of the intervenor-cum-promoter, namely, M/s Chiripal Energy Ltd. and handover possession of the land etc. to the purchaser.

(vi) The tax etc., if any, payable to the State Government and / or agencies/instrumentalities of the State in respect of the assets of the Company shall be paid by the purchaser. The Registry is directed to send by fax a copy of this judgment to the Official Liquidator attached to the Gujarat High Court, Ahmedabad.”

¹(2006) 7 SCC 0233

²(2008) 10 SCC 0440