

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision : 18.03.2009

+ Co.Appeal 21 of 2008

REINZ TALBROS LIMITED ...APPELLANT
Through: Mr.Arjun Mahajan, Mr.Bhuwan
Gugnani and Mr. Rajesh K.Singh,
Advocates.

Versus

KOSTUB INVESTMENTS LIMITED & ORS ...RESPONDENTS

Through: None for R-1.
Mr.R.P.Aggrawal and Mr.Arvind
Kumar Singh Advocates for R-2.
Mr. S.K.Luthra, Advocate for R-3.
Mr.H.G.R.Khattar, Advocate for
R-4.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

- | | | |
|----|--|----|
| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. A winding up petition was filed against the appellant by respondent no.1 on account of non payment of the amount due with interest at the time of redemption of fully paid up debentures. The appellant did not even care to file a reply and subsequently the petition for winding up was admitted and an official liquidator was appointed as the provisional liquidator.

2. The learned company Judge in terms of the Order dated 25.01.2007 directed valuation of the properties of the appellant.
3. It is the grievance of the appellant that the valuer appointed to carry out the task undervalued the properties. The appellant filed an application CA 666/2007 before the learned Company Judge *inter alia* challenging the valuation report and seeking to keep in abeyance the auction of the assets of the company. However, learned Company Judge acted in pursuance to the report of the valuer and directed auction of the property in open court on 12.07.2007 and finalized the auction of the property for Rs. 5.5 crores. CA 666/2007 having become infructuous was withdrawn by the appellant and the appellant filed another CA 79/2008 challenging the auction of the Surajpur property. This application was dismissed by the impugned order dated 31.01.2008. The appellant aggrieved by this Order has filed the present appeal.
4. We have heard learned counsel for the parties and perused the impugned order.
5. The submission of the learned counsel for the appellant is three fold in terms of what was urged before the learned Single Judge.
6. The learned Single Judge in terms of the impugned order has noted that it did not agree to postponement of auction since no steps had been taken by the owners, directors or any other person for settlement of the dues of the creditors nor any details of payment or any proposal for settlement

furnished by them. The reserve price was Rs.3,29,78,400/- while the highest bid was Rs.5.5 crores. The secured creditor, Bank of Baroda, did not dispute the reserve price. The highest bid, being well above the reserve price, was accepted. The auction purchaser deposited the entire amount on 10.09.2007 and possession was delivered on 14.09.2007. The sale was confirmed in favour of the auction purchaser on 29.11.2007.

7. The first plea of learned counsel for the appellant is that the valuation report is below the market price. The learned Company Judge, in our view, rightly found that there was no such material to arrive at the conclusion. It was taken note of that in such auctions, the value achieved is normally less than the true market value. The payment to be realized by auction is utilized to settle the claims of the creditors and the appellant-company could not in this manner indefinitely postpone its obligations while giving no alternative solution. Thus, there is no infirmity in the impugned order in this behalf.
8. The second submission is predicated on the plea of absence of authority in the provisional liquidator to sell the property. Learned counsel for the appellant submits that the powers of the official liquidator acting as a provisional liquidator are not the same as the powers to be exercised by the official liquidator and this is apparent from the distinction between the Sections 450 and 457 of the Companies Act, 1956 (hereinafter referred to as the 'said Act'). Section 450 of the said Act reads as under:

450. Appointment and powers of provisional liquidator.

(1) At any time after the presentation of a winding up petition and before the making of a winding up order, the Tribunal may appoint the Official Liquidator to be liquidator provisionally.

(2) Before appointing a provisional Liquidator, the Tribunal shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice.

(3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or by a subsequent order, but otherwise he shall have the same powers as a liquidator.

(4) The Official Liquidator shall cease to hold office as provisional liquidator, and shall become the liquidator, of the company, on a winding up order being made.

9. We are unable to accept the plea as urged by learned counsel for the appellant for the reason that the plea cannot be analyzed in vacuum and has to be considered in the facts and circumstances of the case. Section 450 (3) of the said Act provides that the powers of the provisional liquidator may be limited or restricted by the Company Court while making his appointment. In the present case, the sale was directed by the Company Court and in fact the auction was finalized before the Court. Thus, the sale has taken place in pursuance to the specific authority and sanction of the Court and it certainly is not the plea that the Company Court cannot authorize the provisional liquidator to do the needful. This aspect has been considered in para

8 of the impugned order and we find no reason to differ from the same.

10. The last aspect urged is that there is an interim stay granted by the Allahabad High Court against the disposal of assets of the appellant-company. In this behalf, the learned Company Judge has taken note of the fact that this order was never brought to the notice of the official liquidator or to the Court. The order is stated to be passed on 23.08.2002 but was not even brought to the notice of the Court when the earlier CA 666/2007 was filed. The official liquidator is not even a party in those proceedings. Thus, the sale could not be said to be in violation of that order.
11. We are of the view that the learned Company Judge has rightly found that there was no infirmity in the sale of the assets. We find that the appellant is only seeking to evade the inevitable consequence of its inability to meet its financial obligations to the respondent no.1/company.
12. We may notice that in the appeal while challenging the Order dated 31.01.2008, the challenge was also laid to the Order dated 12.07.2007, but at the stage of decision of the application for condonation of delay, learned counsel for the appellant confined the challenge only to the Order dated 31.01.2008.
13. Dismissed.

SANJAY KISHAN KAUL, J.

MARCH 18, 2009
dm

SUDERSHAN KUMAR MISRA, J.