

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

COMPANY APPEAL NO. 1 OF 2015
IN
COMPANY PETITION NO. 5 OF 2001
IN
OLR NO. 16 OF 2012

(Gopal s/o Brijmohan Jhunjunwala vs. Akola Oil Industries Limited – in Liquidation – By OL,
Nagpur)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Shri B.N. Mohta, counsel for the appellant.
Shri Anjan De, counsel for the respondent.

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**CORAM : SMT. VASANTI A. NAIK &
A.M. BADAR, JJ.
AUGUST 05, 2015.**

By this Company appeal, the appellant challenges the order of the Company Judge dated 17.04.2015 rejecting an application filed by the appellant for recalling or modifying the orders dated 20.12.2014 and 18.03.2015. A direction is also sought against the respondent to accept the balance amount of Rs.70,06,300/- tendered by the Demand Draft and delete the name of the appellant from the list of persons against whom the sale has been cancelled.

Certain properties were sought to be sold by the Official Liquidator by auction sale. Several persons including the appellant had tendered the bids and they were accepted. A part of the amount was deposited by the proposed purchasers and there was some delay on

the part of the some purchasers including the appellant in depositing the remaining amount of consideration. By an order dated 05.12.2004, with the consent of the learned counsel for the parties, including the counsel for the appellant, the Company Judge directed the auction purchasers to deposit the balance amount of consideration with the Official Liquidator within a period of 15 days from the date of the order. The learned Company Judge observed that if within the said period the auction purchasers failed to deposit the amount of balance consideration, the question in regard to cancellation of their bids would be considered. The matter came up before the learned Company Judge on 20.12.2014. The reports were filed by the Official Liquidator for confirmation of auction sale held on 09.11.2012. While deciding the said reports, the learned Company Judge was informed that some of the bidders had deposited the balance consideration in terms of the order dated 05.12.2015, however, some bidders could not deposit the same within a period of 15 days and hence, further time may be granted. As observed in paragraph 14 of the order dated 20.12.2014, the learned Company Judge granted further time of three months to the bidders who had failed to deposit the balance consideration with a rider that their sale – bids would stand cancelled if the amount is not deposited within a period of three months. Before the expiry of the period of three months, on 18.03.2015, the appellant filed an application seeking time to deposit the remaining

amount of bid, by modifying the order dated 20.12.2014. It is necessary to mention that on 18.03.2015, the learned Company Judge had dismissed an application filed by the appellant and some other bidders for further extension of time to deposit the balance amount. The application filed by the appellant on 18.03.2015 was dismissed by the learned Company Judge by the order dated 18.03.2015. On 09.04.2015, the appellant again filed an application seeking permission to deposit the balance amount by a demand draft. The said application was rejected by the order dated 17.04.2015 that is subjected to challenge in this appeal.

On hearing the learned counsel for the parties and on a perusal of the applications made by the appellant and the orders passed by the learned Company Judge, on the same from time to time, it appears that there is no scope for interference with the order dated 17.04.2015 in this appeal. The balance amount of consideration as per the bid was required to be paid within a period of 15 days, as could be gathered from the order of the learned Company Judge dated 05.12.2004. It appears that the order was passed by the learned Company Judge on 05.12.2004 with the consent of the learned counsel for the parties. The appellant and certain other bidders were not in a position to deposit the balance amount within a period of 15 days and hence, the learned Company Judge by the order dated 20.12.2014, granted time of three months to the successful bidders to deposit the balance

amount. It was clearly observed in the order dated 20.12.2014 that if the bidders failed to deposit the balance amount within a period of three months from 20.12.2014, their bids (sale) would stand cancelled. It is an admitted position that the appellant did not deposit the balance amount within a period of three months from 20.12.2014. Hence, by the order dated 20.12.2014, the sale in favour of the appellant stood cancelled and the Official Liquidator was required to submit the report in respect of the cancellation of the sale. A day before the completion of the period of three months, i.e. on 18.03.2015, the appellant had again filed an application seeking time to deposit the balance amount and also modification of the order dated 20.12.2014 by which the application filed by the appellant for extension of time was rejected. The said application was rejected by the learned Company Judge. After the same was rejected, an application was filed by the appellant on 09.04.2015 seeking permission to deposit the amount by demand draft. The said said application was also rejected by the learned Company Judge.

We do not find any reason to interfere with the order dated 17.04.2015 in this appeal. The learned Company Judge had with the consent of the parties, granted time of 15 days to the successful bidders to deposit the balance amount on 05.12.2004. Not only that the appellant had not deposited the balance amount within 15 days in terms of the said order but the appellant also failed to deposit the balance amount

within a period of three months from the subsequent order dated 20.12.2014. The learned Company Judge had rejected the application filed by the appellant on 18.03.2015 for further extension of time on the same day. The appellant, therefore, filed an application for seeking modification of the orders dated 20.12.2014 and 18.03.2015. The said application was rejected by the learned Company Judge. The view expressed by the learned Company Judge while rejecting the application dated 09.04.2015 by the order dated 17.04.2015, is a possible view. There has to be some finality to the orders. If permission would have been granted to the appellant to deposit the demand draft, such permission would have been required to be granted to the other successful bidders who were not in a position to deposit the amount within a period of three months from 20.03.2015. Also, on 20.03.2015, it was clearly made known to all the bidders that if they fail to deposit the balance amount within the said period, the bid - sale would stand cancelled.

In view of the aforesaid facts, the Company Appeal is dismissed with no order as to costs.

JUDGE

JUDGE