

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

O.S.A.Nos.170 and 171 of 2015
and M.P.No.1 of 2015

C.S.Javid ... Appellant in both appeals

versus

1.The Official Liquidator
High Court,
Madras
(as liquidator of M/s.Technology Plastics Ltd.,
in Liquidation)

2.Tamil Nadu Industrial Investment Corporation Ltd.,
Sidco Project Office Building,
Thiru Vi Ka Industrial Estate
Guindy, Chennai 32.

3.SIPCOT
19-A, Rukmani Lakshmipathy Road
Egmore, P.B.No.7223, Chennai 600 008.

4.State Bank of Travancore
United India Building,
Esplanade, Chennai 600 108.

5.Allahabad Bank,
George Town Branch,
Chennai 600 001.

.. Respondents in both appeals

6.SSM Infrastructure
No.6, Dr.T.V.Naidu Road,
Chetpet, Chennai.

7. B.B.Mohan Kumar

8. Classic Timber,
No.280, M.T.H.Road,
Villivakkam,
Chennai 600 089.

.. Respondents in OSA.No.171 of 2015

Appeals filed under Order 36 Rule 11 of Original Side Rules read with Clause 483 of Companies Act, 1956, against Judgment and Decree dated 28.10.2013 passed in Company Application Nos.260 and 440 of 2012 in Company Petition No.44 of 1996 on the file of this Court.

Prayer in Comp.Apl.260/2012: Praying this court to condone the delay of 429 days in filing application to set aside the order dt.20/08/2010 passed in Comp.Apl.No.770/2006 in C.P.44/1996.

Prayer in Comp.Apl.440/2012: Praying this court to implead the produces respondents.

1. SSM Infrastructure,
No.6, Dr.T.V.Naidu Road, Chetpet, chennai.
2. B.B.Mohan Kumar,
No.10, 2nd Cross, Maranaveri, Salem.
3. Classic Timber,
No.280 M.T.H. Road, Villivakkam,
Chennai - 89.

as 6th, 7th, 8th respondents in the Comp.Apln.260/2012 in No.1770/2006 in C.P.44/1996.

Prayer in Comp.Petn.44/96: Praying that
a) M/s. Technology plastics Ltd. the respondent company may be wound-up under the orders and directions of this court under the provision of the companies Act 1956.

b) The Official Liquidator provincial Liquidator of the respondent company may be appointed directing him to take charge of the assets of the respondent company.

c) Costs of this petitiin may be granted and

d) such further or other orders as this Hon'ble court may deem fit may be granted.

For Appellant .. Mr.S.T.Varadarajulu

J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

The Ex-Managing Director of the Company in liquidation makes one more effort to somehow get the auction sale set aside on the

ground of inadequate consideration, though none of the creditors have any objection to the same.

2. The company defaulted in payment of dues to various creditors resulting in its liquidation and sale of the plant and machinery, as also the land. The valuation was obtained from M/s.ITCOT Consultancy Ltd., apart from private valuers. The valuation of ITCOT was on the lower side. It may be stated that there were two valuation reports of ITCOT dated 02.07.2007 later on 13.07.2007. The auction was held on that basis of the higher valuation and the highest offer received in the auction for the land and building was Rs.6.660 Crores, while for the Plant and Machinery, it was Rs.3.17 Crores. The sale was confirmed by the Court vide order dated 28.02.2010 and possession was handed over on 18.11.2011.

3. We may note that the initial endeavour of the Official Liquidator who filed report dated 26.08.2010, seeking reconsideration of the auction confirmation on account of the possibility of market price being much higher than the valuation report was also not acceded to by the learned Company Judge vide order dated 11.04.2011.

4. All this period of time, the appellant did not do anything, but post confirmation on 18.08.2011, moved an application seeking to set aside the auction without impleading the auction purchaser. It is only later that the appellant / Ex-Managing Director sought to implead the auction purchaser. The endeavour of the appellant has been unsuccessful, in terms of the impugned order dated 28.10.2013.

5. A perusal of the impugned order shows that the company was ordered to be wound up as far back on 12.06.1998. The process ultimately putting the property to sale itself thus took more than a decade. On our query, it is conceded by the learned counsel for the appellant that the dues of all the creditors stand satisfied and thus, he alone has interest in seeking to setting aside the auction.

6. We are in agreement with the opinion of the learned Single Judge that the appellant cannot be permitted to unsettle the settled position as and when he chooses. It is believed by him that the property is worth Rs.20 Crores, but there is nothing on record to support that claim. There was no objection to the valuation obtained at any stage prior to auction, after complying with all the formalities, by any of the secured creditors. The auction purchaser has been in possession and enjoyment of the property for the last more than four years. Merely because the appellant thinks that his property could fetch more and that in his opinion, the auction was held without obtaining proper valuation, cannot be an excuse to set the process at naught. It is trite to say, in such auction sale, full market price is often difficult to achieve because it is in the nature of distress sale. Not only that, any purchaser keeps in mind the possibilities of there being various impediments created of the kind which the appellant now seeks to create. None questioned the

order dated 22.07.2010, fixing the minimum price for the auction and now to claim that the upset price should have been higher is without basis. We are thus not inclined to interfere with the impugned order.

7. The Original Side Appeals accordingly stand dismissed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ksr

To

1.The Official Liquidator High Court, Madras.
(as liquidator of M/s.Technology Plastics Ltd.,
in Liquidation)

2.Tamil Nadu Industrial Investment Corporation Ltd.,
Sidco Project Office Building,
Thiru Vi Ka Industrial Estate, Guindy, Chennai 32.

3.SIPCOT,19-A, Rukmani Lakshmipathy Road
Egmore, P.B.No.7223, Chennai 600 008.

4.State Bank of Travancore
United India Building, Esplanade, Chennai 600 108.

5.Allahabad Bank
George Toun Branch, Chennai 1.

सत्यमेव जयते

O.S.A.Nos.170 and 171 of 2015

svi co
kra 29/09/2015

WEB COPY