IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CP No. 13 of 2007
Date of decision: April 7, 2015

M/s Ratna Commercial Enterprises Ltd.

.... Petitioner

Versus

Vasu Tech Ltd.

...... Respondent

Present:- Mr. Nitin Jain, Advocate with
Mr. M. Jayakumar, Official Liquidator.

Ms. Rupa Pathania, Advocate
for Vasu Tech Ltd.

Mr. Tejinder Singh, Advocate for
Mr. Manish Jain, Advocate
for Kotak Mahindra Bank Ltd.

Mr. Manoj Kaushik, Advocate

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<u>Amit Rawal, J (Oral)</u>

The petitioner has filed the present petition for winding up of the respondent-Company under Section 433 (e) and (f) read with Section 434, 439 (1) (b) of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules 1959. The controversy between the parties to the *lis* has already been reflected in the order dated 22.4.2009 whereby this Court considering the detail arguments and case law admitted the petition and the factum of admission was ordered to be published in the newspapers Indian Express, Times of

India, Delhi Edition,Dainik Bhaskar(Hindi) and in the official gazette of Haryana. Thereafter vide order dated 14.10.2011 this Court considering the fact that the respondent-Company was dealing the matter by filing an appeal against the order of admission before the Division Bench and as well as was in the process of not squandering/alienating the property, appointed the provisional liquidator attached to this Court to take over the immovable and movable assets of the respondent-Company. However, considering the prayer of the respondent-Company the order of appointment of provisional liquidator was kept in abeyance till the next date of hearing i.e. 23.11.2011. But on 23.11.2011 it was brought to the notice of the Court that the respondent-Company had not paid any payment to the petitioner and Official Liquidator was directed to proceed in terms of the order dated 14.10.2011 in accordance with law. It is a matter of record that the Company Appeal bearing No. 14 of 2009 had been filed against the order dated 22.4.2009 whereby the aforementioned Company Petition was admitted and the said appeal was dismissed by the Division Bench vide order dated 10.11.2009.

Affidavit of compliance had been filed which was noticed in the order dated 8.4.2010. Since the ex-Management of the Company (in provisional liquidation) was not co-operating with the Official Liquidator and after noticing the request of the O.L. vide order dated 2.8.2012 this Court directed the provisional liquidator to initiate the proceedings under Section 454 of the Companies Act, 1956.

A sale notice was published in the newspapers on 9.5.2014 for inviting the sealed offers for purchase of land, building, plant and machineries of the Company (in provisional liquidation) “as is where is and whatever there is a basis”. The last date for submission of the bid was kept as 2.6.2014 as the tenders were to be opened on 3.6.2014. It has transpired that 13 bidders have given bid in respect of lot No.II i.e. regarding plant and machinery of the Company (in provisional liquidation). On the same day i.e. 9.5.2014 another publication was carried out in “The Hindustan Times “Delhi and Chandigarh Edition” The Tribune (all editions) and Punjab Kesari' (Chandigarh and Haryana editions) whereby the claim of creditors and workmen of the company (in liquidation) were invited. On 1.12.2014 it was brought to the notice of this Court that movable property i.e. plant and machinery of lot No. II of the Company (in provisional liquidation) was auctioned by the Official Liquidator and highest bid was ₹45.50 lacs. This Court after noticing the contention of the ex-Management of the Company (in provisional liquidation), that the valuation of the assets of the Company was on the lower side ordered that the ex-Management shall be at liberty to find a better buyer offering a price more than what has already been offered for lot No. I and II. It was further ordered that the persons who participated in the auction in the bid of Lot No. I and II shall be at liberty to offer more bid than what has been offered by the previous bidder i.e. Golden Tex.

The Official Liquidator was directed to give intimation to all the bidders to participate in the bid of lot No. I and II.

The bidders were directed to bring the Demand Draft in favour of the Official Liquidator to the extent of 10% of the amount to be offered by them for the purpose of purchase of any assets of the Company (movable/immovable).

On 16.2.2015 the counsel for the ex-Management of the Company (in provisional liquidation) and bidders for both the lots I and II, were present in Court and after inter-se bidding, this Court accepted the highest bid of Naresh Kumar which was to the tune of ₹6.25 Crores for Lot No. I and II and a draft of ₹50 lacs was handed over by the counsel for Naresh Kumar to the Official Liquidator in the Court and highest bidder was directed to deposit balance of 12,50,000/- to make it 10% as earnest money of offer made, with the Official Liquidator within 10 days. It was also ordered that earnest money of all other bidders be also returned to them by the Official Liquidator. The order dated 16.2.2015 reproduced is as under:-

> *"In terms of the order passed by this Court on 27.01.2015, the persons, namely, Naresh Kumar, Rahul Kumar Dhiman, M/s S.Q. Traders, Shan Khan, M/s Tripati Trading Company, M/s Gera Wood Craft, M/s Asian Beverages, M/s S.K. Trading Co., M. D. Anwar, M. D. Shaney, Arkan Alam, Gulshan Arora, Rajesh Kumar Garg, who had earlier offered to buy the Lot No.II are present in Court.*
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> *Earlier for lot No.II highest bid offered was of ` ₹45,50,000/- by Arkan Alam. At the time of inter-se bidding of lot No.II in Court starting from ₹52,00,000/- offered by Golden Tex and*

₹52,50,000/- offered by Arkan Alam, final bid of ₹53,00,000/- was given by Golden Tex. Golden Tex has already deposited a sum of ₹12,50,000/- with the Official Liquidator as earnest money for purchase of lot No. II.

The composite bid of both the lots (lot No. I and II) was also made in the Court by Naresh Kumar and Golden Tex in the following manner:-

Naresh Kumar	₹5. 51 crores
Golden Tex	₹5.52 crores
Naresh Kumar	₹5.55 crores
Golden Tex	₹5.60 crores
Naresh Kumar	₹5.65 crores
Golden Tex	₹5.70 cores
Naresh Kumar	₹5.75 crores
Golden Tex	₹5.80 crores
Naresh Kumar	₹5.85 crores
Golden Tex	₹5.90 crores
Naresh Kumar	₹5.95 crores
Golden Tex	₹6.00 crores
Naresh Kumar	₹6.05 crores
Golden Tex	₹6.10 crores
Naresh Kumar	₹6.15 crores
Golden Tex	₹6.20 crores
Naresh Kumar	₹6.25 crores

A draft of ₹50,00,000/- has been handed over by learned counsel appearing for Naresh Kumar to the Official liquidator in Court and the balance of ₹12,50,000/- to make it 10% as earnest money of the offer made shall be deposited by

Naresh Kumar with the Official liquidator within a period of 10 days.

Learned counsel for the ex-management of the company in liquidation stated that the Ex-Managing Director of the company in liquidation Dhruv Verma, is in custody in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881, wherein he has been convicted. She seeks four weeks time to bring a buyer, offering more than the price offered by Golden Tex for lot No. II or Naresh Kumar for lot Nos. I and II, together.

The offer for purchase of lot No. II in CA No. 886 of 2014 has been given by Golden Tex for a total sum of ₹52,00,000/- against which a sum of ₹12,50,000/- has been deposited as earnest money. At the time of auction the maximum offer was made by Arkan Alam for ₹45,50,000/- and he had deposited a sum of ₹11,50,000/- as earnest money at that time. As there is a buyer available offering more value for lot No.II and he has even deposited the earnest money of ₹12,50,000/-, ₹11,50,000/- deposited by Arkan Alam be returned to him by the Official liquidator. Since there is a buyer available offering money to the tune of CA Nos. 886 of 2014 ₹6.25 crores for lot Nos. I and II, together, the earnest money of ₹12,50,000/- deposited by Golden Tex, the highest bidder of lot No. II be also returned to them.

Adjourned to 17.03.2015."

On 17.3.2015 it was pointed out that the highest bidder had not deposited the balance amount of ₹12.50 lacs to make it 10% as earnest money of the offer made and on request of the highest bidder, a week's time was granted to deposit the balance amount. The said balance amount had accordingly been deposited. Thus the Official Liquidator has received a sum of ₹62.50,000/- being 10% of the highest bid. Since the Company has failed to discharge the admitted liability and during the interregnum subsequent events have taken place i.e. both movable and immovable assets of the Company have been sold, thus, it is *ex facie* proved that the Company is unable to pay the admitted liability/debt.

In these circumstances the respondent-Company is ordered to be wound up. The Official Liquidator attached to this Court who was earlier appointed as provisional liquidator of the Company is hereby appointed as liquidator of the Company, who has already taken over the assets i.e. movable and immovable of the Company shall take further steps in accordance with law. The status of winding up be published in The 'Indian Express', Delhi/NCR edition Dainik Tribune (Haryana Edition)' and also in the Official Gazette of State of Haryana by the official liquidator.

The Company Petition stands disposed of.

(AMIT RAWAL)
JUDGE

April 7, 2015
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