COMP.APP.Nos.345 to 348 of 2015

RAJIV SHAKDHER, J.

1. These four applications have been filed by one Mr.Venanlia Annie Baptista.

1.1. The applicant is the Ex-director of the Company in Liquidation, i.e., M/s.South East Footwear Limited, Chennai.

2. The applicant has sought for several reliefs in the captioned applications.

2.1 Briefly the relief sought for in each of the applications are as follows:

(i) In C.A.No.345 of 2015, the applicant seeks to set aside an order dated 29.11.2013 whereby, the subject immovable property was sold in favour of respondent no.7, i.e., one C.Madhanraj.

(ii) C.A.No.346 of 2015 has been filed for staying the proceedings if any, taken out pursuant to the order dated 29.11.2013.

(iii) C.A.No.347 of 2015 has been filed to injunct respondent no.7, i.e., C.Madhanraj, from creating encumbrance/third party rights in the subject property.

(iv) Lastly, C.A.No.348 of 2015 has been filed to seek appointment of Advocate Commissioner to ascertain the market value of the subject property.

3. Mr.Yogesh Kannadasan, who presses the applications cited two grounds in support of his applications.

3.1. The first ground put forth by the learned counsel for the applicant is that vide order dated 05.04.2007, when the auction in the first instance was set aside, this Court had directed that the valuation will be carried out by ITCOT. It is stated that contrary to the said order valuation was carried by ICICI Bank via, an individual valuer.

3.2. The second ground of challenge, is that, the subject property has been sold at a woefully low price.

4. It is stated that the subject land admeasuring 11.91 acres, would have, at the relevant point in time, fetched a price of approximately Rs.30 Crores. Therefore, according to the applicant, the rate at which the subject land ought to have been sold should have been at least, Rs.2.5 Crores per acre.

5. Mr. Ramaiah, learned Official Liquidator says that this

Court by an order dated 29.08.2013, had directed fresh valuation of the subject property and issuance of a fresh advertisement for sale. It was the learned Official Liquidator's submission that it was pursuant to the said order that an valuation was got done (as was indicated in the order), via ICICI Bank Limited, which in turn, had engaged the services of, one, Mr.Ravichandran, (Chartered Engineer and Valuer). Learned Official Liquidator says, that the said valuer had pegged the market value of the subject property at Rs.6,29,83,400/- with a distress value fixed at Rs.4,72,37,550/-. It is stated that keeping in mind the said figure, the upset value was fixed at Rs.6.30 Crores.

6. Learned Official Liquidator further says that, accordingly, auction notice was taken out whereby, two offers were received i.e., one, from Mr.R.Dinesh for a sum of Rs.4,77,99,999/-, and other, from respondent No.7 i.e., Mr.C.Madhanraj, for a sum of Rs.4.60 Crores. It is further stated that, since, the upset price was pegged at Rs.6.30 Crores, the bidders were asked to raise the value of their offers; whereupon, respondent No.7/Mr.C.Madhanraj, up scaled his offer to Rs.6.31 Crores.

6.1. Accordingly, the Official Liquidator says respondent No.7, i.e., C.Madhanraj's offer was accepted and sale was confirmed in his favour.

It is also the submission of the Official Liquidator before me, that at no point in time, the applicant, who is the Ex-Director of the Company in liquidation, raised any objection that the valuation arrived at qua the subject property, was very low, as is now sought to be claimed by her.

6.2. To be noted, learned counsel for the successful bidder, i.e., respondent No.7/Mr.C.Madhanraj, supports the contentions advanced by the learned Official Liquidator.

7. I have heard the learned counsel for the applicant, the learned Official Liquidator, and the learned counsel for the respondent No.7/Mr.C.Madhanraj.

8. It is clear from the record that this Court in its order dated 29.08.2013, had directed that the Official Liquidator to carry out a fresh valuation and thereupon, issue a fresh public notice of sale. The Court, also indicated, that the cost of valuation and advertisement would be borne by ICICI Bank, which was the secured creditor of the company in liquidation. Accordingly, as indicated by the Official Liquidator, valuation was got done by ICICI Bank, via, Mr.Ravichandran (Chartered Engineer and Valuer). The said valuer pegged the fair market value of the property at Rs.6,29,83,400/- . Upon

bids being invited, as indicated above, Respondent No.7, i.e., C.Madhanraj, was declared as the successful bidder and, consequently, paid a sum of Rs.6.31 Crores towards auction price.

9. The record, also shows that the very same applicant had filed a series of applications being Nos.C.A.Nos.1304 to 1314 of 2013 which were brought up for the very same purpose, whereat, my predecessor, vide order dated 23.01.2013, made the following observations:

> "........ Today, Mr.Syed Basha, learned counsel who was appearing for the promoters of the Company states that he has given change of vakalat. Mr. Abdullah, learned counsel states that he has been instructed to appear. **Through I can straight away dismiss all these applications, in view of the dilatory tactics adopted by the applicant, I am adjourning the applications for giving a last chance, to next week**.
>
> **In the meantime, the Original Liquidator has filed a report stating that sale deed has been executed and possession has also been handed over to the auction purchaser. The same is recorded. I am compelled to record this, in view of the fact that one of the promoters of the company has been writing letters to all authorities, including a secured creditor, the Ministry, etc., as though the Official Liquidator was at**

fault in bringing the property to sale. The party who wrote that letter appeared before me on the earlier occasion and I directed him to file an affidavit of apology. Thereafter, he had disappeared.

It should be brought on record that the company went before BIFR way back in 1996. After keeping the creditors at bay for over two decades, the property was sold after three unsuccessful attempts. Thereafter, without any proposal for revival of company but keeping proposals only in imagination, the applicant has come up with these applications.

Therefore, the Official Liquidator's report of execution of the sale deed and handing over of possession to the auction purchaser is taken on record. To give one more opportunity to the applicant, the applications are adjourned to 30.01.2014. ......"

10. Perusal of the above said observations make it quite clear that the applicant has neither been able to revive the company nor, has the applicant been able to place any scheme of revival before this Court. The applicant has stalled its creditors, virtually, since 1996. In these circumstances, these applications appear to be yet another attempt, at best, to prevent liquidation of assets and thereby, prevent, any which ways, the creditors from receiving their legitimate dues.

11. I have asked the learned counsel for the applicant, as to whether, C.A.Nos.1304 to 1314 of 2013, were finally pressed by the applicant. Learned counsel for the applicant is not able to provide any information with regard to the same. Notwithstanding the above, the present applications in view of what is observed herein by me are clearly without merit, and therefore, are dismissed with cost of Rs.15,000/-.

12. The applicant will deposit the cost with the office of the Official Liquidator, against receipt, within a period of ten days from today, failing which, the Official Liquidator will move an application and bring this aspect to the notice of this Court. In case the Official Liquidator were to receive the costs as imposed, he will deposit the same, in the account of the company in liquidation, so that it can enure to the benefit of the creditors.

05.07.2016

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<u>RAJIV SHAKDHER, J.</u>

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