Company Application No.867 of 2016
in
C.P.No.115 of 2004

RAJIV SHAKDHER,J.

1. This is an application filed by a person, who claims to hold 150 shares in the company in liquidation, i.e., Vijayakumar Mills Limited.

2. By virtue of this application, a direction was sought from this Court to cancel/quash the impugned auction notice, dated 08.09.2016, published in the newspapers.

3. This Court had directed publication of the auction notice vide order, dated 23.08.2016. The publication was directed, based on the valuation report submitted by the ITCOT, in May 2016.

4. To be noted, this is a second attempt at selling the assets of the company in liquidation.

5. The objections taken qua the impugned sale notice are, broadly, as follows:

(i) that the cause title of the company application and company petition are not given in the sale notice;

(ii) that the location of the immovable properties categorised as Lots C and D are described as "Bethanakanpatti" and "Keethanur" village as against "Beethanaickenpatti" and "Kaethanoor" respectively;

(iii) the survey numbers of the properties are not given under Lots C and D;

(iv) between the date of publication and the opening of tender only 11 days are given; and

(v) finally, the area of the immovable property falling in Lot D is wrongly indicated as 59 acres and 34 cents, whereas, the actual area is 63 acres and 40 cents.

6. According to me, none of the objections are sustainable. The reason for the same is thus:

6.1. The auction notice clearly sets out the date of the order passed by this Court, as also the number of the company application and the company petition, in which the sale order was passed.

6.2. As indicated above, this Court had passed an order, dated 23.08.2016, for bringing the assets of the company in liquidation to sale.

6.3. The auction notice/sale notice in clear and bold terms sets out the name of the company in liquidation. Furthermore, the auction notice clearly states, that for detailed terms and conditions, the prospective bidders should either visit the website www.olchennai.in or, in the alternative could visit the office of the Official Liquidator, on any working day.

6.4. Insofar as the survey numbers are concerned, as correctly pointed out by the Official Liquidator, who is present in Court, on advance notice, the same are clearly set out in the tender form.

6.5. As regards the objections concerning the area of the immovable property, falling in Lot D, the learned Official Liquidator tells me, it is based on the report of the valuer. The valuer is a Government agency, i.e., ITCOT. There is a presumption, at least at this juncture, in favour of the valuer, that it would have carried out the necessary due diligence while generating its report.

6.6. Insofar as the description of the villages are concerned, there may be a slight typographical error, which to my mind does not affect the materiality of the auction notice. Since, survey numbers and name of the Taluk and District are given, the prospective bidders would in my opinion, be aware of the location of the property in issue. This apart, the auction notice had clearly given time to the prospective bidders to carry out inspection at site. Therefore, it would not be a case where a bidder would be bidding for one property and buying another.

6.7. Insofar as the objection raised, vis-a-vis, the short period obtaining between the date of publication of the auction notice and the opening of the tender is concerned, it would have to be said, since there is no statutorily prescribed time, there will always be a certain amount of subjectivity, which in turn would be governed by the facts obtaining in each case. Given the fact that it was a second attempt at selling the assets, the concern of the Court was that assets are liquidated as quickly as possible, so that the long wait of creditors, comes to an end. In my view what is more important in the auctioning process is, not the gap between dates of publication of the notice and the opening of tender, but the publicity, which the auction notice receives. There is no grievance that the auction notice was not given due publicity.

8. Having regard to the aforesaid, I am of the view that the objections raised qua the auction notice are not sustainable for the reasons given above.

9. Before I close my order, I must record, that I get a distinct sense, that the applicant, who holds only 150 shares and would, invariably be amongst last persons, in order of priority to receive monies, if any, available, has been put up by the ex-Management. It is conceded by the learned counsel for the applicant- that the applicant, i.e.,Mr.L.Lourthuraj is the "founder" shareholder of the company in liquidation. His late arrival on the scene has been explained in vague terms. It is stated that knowledge of the sale of assets was obtained by him via a friend who is also reportedly, a shareholder, in the company in liquidation. Notably, the name of the friend is not set out in the affidavit. Furthermore, I would have thought that since the concern and the status of the applicant and his shareholder-friend was the same, he would have joined him in moving

the application. The story weaved in the affidavit accompanying the application has been set forth only to plug the gap to explain the ''nth'' hour arrival on the scene.

10. Accordingly, the captioned application is dismissed being bereft of any merit.

vj2/gg 21.09.2016

Note: Issue order copy on **26.09.2016**

RAJIV SHAKDHER,J.

vj2

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