

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.S.A.No.28 of 2016
and
CMP.No.2833 of 2016

M.Sivaraman

.. Appellant

vs

1.The Official Liquidator,
High Court, Madras as the
Provisional Liquidator of
M/s.Aruna Textiles and Exports Limited,
(In Provisional Liquidation)

2.M/s.M.V.M. Traders,
rep. by its Sole Proprietor M.Gopalakrishnan,
No.7 (144), Kamarajapuram North,
Karur.

.. Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side
Rules read with Clause 15 of Letters Patent against the order
made in C.A.No.1303 of 2013 in C.P.No.117 of 2004, dated
28.11.2013.

For Appellant .. No Appearance

For Respondents .. Mr.S.N.Sundar for R1

Mr.J.Nithyanandan for R2

JUDGMENT

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

None appears for the appellant.

2. The appellant seeks to question the proceedings for sale
of the property to recover the dues in pursuance of the sale
notice dated 13.10.2013.

3. It may be noticed that as against the impugned order of the learned Company Judge dated 28.11.2013 in C.A.No.1303 of 2013 in C.P.No.117 of 2004, the provisional winding up order was passed on 05.01.2007 in respect of M/s.Aruna Textiles & Export Private Limited. In terms of the orders of the learned Company Judge dated 05.01.2007, based on the recommendation by BIFR in Case No.243 of 2000, dated 17.3.2004, the debts continue to remain unpaid over a long period of time and no viable scheme could be framed for revival of the Company.

4. A valuation of the assets of the Company was carried out through ITCOT in pursuance to the order dated 24.11.2011 and vide order dated 08.10.2013, the Company Court permitted the Official Liquidator acting as Provisional Liquidator to invite tenders for sale of the assets with the upset value of Rs.400 lakhs consisting of the land, building, plant and machineries of the Company. The date of conducting of the auction was fixed as 29.10.2013.

5. The appellant being the Managing Director and Promoter of that Company, on the anvil of the auction, sought postponement of the sale and permission to revive the Company. This application was dismissed on 29.10.2013 itself.

6. 42 tenders are stated to have been received from the prospective purchasers as per the report of the Official Liquidator dated 12.03.2014 placed before us. The tenders were opened and inter se the bidding among the tenderers was held in Court and finally the tender of Mr.Gopalakrishnan was accepted for Rs.7.22 Crores. The successful bidder, however, sought extension of eight weeks' time to pay the balance consideration and vide order dated 28.11.2013 in C.A.No.1303 of 2013, time was granted up to 06.01.2014 to make the payment along with interest at 9% per annum on the balance consideration. Such extension was granted for the reasons recorded in the order as follows:-

"Under normal circumstances I would not have been inclined to grant time but this is a case where as against the upset price of Rs.4 crores the auction fetched about Rs.7.22 crores. There were 42 offers therefore the conduct of another auction may or may not fetch the desired result. Today the applicant made payment of Rs.1 crore by way of a Demand Draft."

7. The Promoter was, however, granted time to bring the scheme for revival in the mean time.

8. The auction purchaser has made the entire payment along with interest and thus, orders were finally passed on 20.12.2013 for the Official Liquidator to hand over possession to the

auction purchaser with police assistance, if necessary. The sale deed was also executed in favour of the auction purchaser and possession is stated to have been handed over on 21.12.2013.

9. The aforesaid shows that all formalities have been completed and the claim for revival of the Company remained in the air for a number of years. 14 years is not a short time for revival of a Company.

10. We, thus, find no merit in this appeal and accordingly, the appeal is dismissed. No costs. Consequently, C.M.P.No.2833 of 2016 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.J.Nithyanandan, Advocate, S.R.No.10663

O.S.A.No.28 of 2016

jsv(CO)
srg(26/02/2016)

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