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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on : 10.03.2016

\+ **CO.APP. 34-35/2011, C.M. APPL.10267/2011**

UP STATE INDUSTRIAL DEV CORP LTD & ANR..... Appellants

Through : Ms. Geeta Luthra, Sr. Advocate with Sh. Rajesh Raina and Ms. Shivani Luthra Lohiya, Advocates.

versus

MAYUR SYNTEX LTD & ORS ..... Respondents

Through : Sh. Alok. K. Agarwal, Advocate, for Respondent No.2.

Sh. Abhishek Puri with Sh. Sriram Krishnan, Advocates, for Respondent No.3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The appeal is directed against an order of the Company Judge dated 18.08.2010 in Co.Appl. Nos. 1428/2008 and 693/2008.

2. The facts are that M/s. Mayur Syntex Limited [hereafter "the company"] was directed to be wound-up pursuant to the determination by the Board for Industrial and Financial Reconstruction (BIFR) to which it was referred under the provisions of the *Sick Industrial Companies (Special Provisions) Act, 1985* [hereafter "the 1985 Act"]. After unsuccessfully attempting to finalize the Rehabilitation Scheme, BIFR held that the company could not be revived and recommended its winding-up under

Section 20 of the 1985 Act.

3. After winding-up, the Official Liquidator [hereafter "OL"] auctioned the company's property, a 1,30,551 sq. metres industrial plot. Since the property was large in area, the Company Court permitted one bidder to bring another nominee, if required. The successful bidder was M/s. Chaudhary and Sons (Forging) Pvt. Ltd.; it nominated another party as co-owner. The sale was confirmed by the OL in 2008 – even though the bids were finalized and the amounts paid in 2005.

4. The successful bidder had moved an application, being Co. Appl. No. 902/2006, which was pending consideration. In that, the bidder sought confirmation of the certificate issued. During the pendency, in view of the OL's confirmation, two further applications were moved, being Co. Appl. Nos. 1428/2008 and 693/2008. Both these were by the two bidders/applicants, who sought directions not only for confirmation by the Court but also that appropriate directions to facilitate the transfer and sub-division of the property be issued to the lessor, i.e. Uttar Pradesh State Industrial Development Corporation Ltd. ("UPSIDC"). The lessor in its objection to the applications contended that under its policies, normal transfer and sub-division charges were payable and that such amounts were recoverable as on the date the application, complete in all particulars, was furnished to it. The UPSIDC also contended that the concessional transfer/sub-division charges could not be claimed as a matter of right since under its policies, if auction had been conducted pursuant to orders of BIFR, then alone such concessional charges can be recovered and not otherwise. Learned Single Judge firstly recorded the withdrawal of the earlier application, being Co.Appl. No.902/2006 in view of the fact that the reliefs

claimed were covered by earlier two applications, i.e. Co. Appl. Nos. 1428/2008 and 693/2008. After hearing learned counsel for the parties and after considering the submissions, the Court directed as follows:

> *"Looking to the fact that on 15.09.2005, while accepting the bid of Chaudhary & Sons (Forging) Pvt. Limited, this Court had granted two weeks' time to give the names of 2nd and 3rd nominees and that on 26.09.2005 itself, Chaudhary & Sons (Forging) Pvt. Ltd. had nominated Ghaziabad Ispat Udyog Ltd. for 50% of the land that had been sold and thereafter the possession of the auctioned property was also handed over by the Official Liquidator on 11.11.2005 to the aforesaid Chaudhary & Sons (Forging) Pvt. Ltd. and Ghaziabad Ispat Udyog Ltd., it would be appropriate if all the necessary transfer charges, sub-division charges etc. are charged in terms of the rates applicable at that time itself, inter-alia, for the reason that the matter with regard to the confirmation of the sale and also the execution of the requisite sale deed in favour of the auction purchaser has been pending in this Court.*
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> *In view of the above, the Official Liquidator may issue the relevant sale certificate in favour of Chaudhary & Sons (Forging) Pvt. Ltd. after completing the necessary formalities, if any, and thereafter the UPSIDC shall process and complete the execution of the lease deed in favour of Chaudhary and Sons (Forging) Pvt. Ltd., and the sub-division of the plot and the execution of the further sale deed in favour of Ghaziabad Ispat Udyog Ltd. for half of the said property. All the requisite charges that are required to be deposited by the applicants, in terms of the above orders, shall be calculated by the UPSIDC and information thereon be given to the applicants within three weeks from today. The charges, as pointed out, will thereafter be deposited within another two weeks. All other remaining steps shall be completed within another four weeks thereafter by the UPSIDC. Both the applications are disposed of in the above terms."*

5. It is contended by learned senior counsel for the appellant that the

impugned order is erroneous. It is firstly submitted that the learned Single Judge wrongly assumed that the present case is a BIFR one and, therefore, covered by the UPSIDC policy. Learned counsel relied upon Chapter 6 (*Transfer, Reconstitution of Industrial Plots*) policy of the UPSIDC, to say that if auction is conducted by BIFR then alone would the concessional rates be applicable. The relevant portion of the policy is as follows:

> *"**BIFR CASES:-***
> *If in order to save or rehabilitate the unit as per orders of BIFR new shareholders are inducted/shares are transferred to infuse funds it is allowed without any transfer levy provided the plot is retained with the allottee company. However, if it is decided by the BIFR to dispose-off the plot through auction, the auction purchaser shall be recognized only after payment of transfer levy at the rate applicable in cases of normal transfer provided BIFR has not directed otherwise (See Auction cases 6.07(VIII)."*

6. It is contended that the question of granting any concession to the transfer and sub-division in this case does not arise. Learned senior counsel highlighted that the application, complete in all its particulars was furnished to the UPSIDC pursuant to its letter of 30.11.2010 – i.e. only some time in 2011. It is submitted that having regard to this fact, the Company Court could not have directed that the transfer charges and other amounts towards sub-division ought to be recovered from the date 11.11.2005. After the entire amount was paid, possession was handed over to the auction purchaser by the OL.

7. Learned counsel emphasized that in this case, the successful bidders unilaterally sub-divided the property which is impermissible under the UPSIDC policy.

8. Learned counsel for the respondents/auction purchasers and the other

successful applicant submitted that this Court should not interfere with this order. It is pointed out that the auction in this case was permitted and the amounts deposited with the OL date as far back as in October-November 2005. The confirmation of the sale by the Court took place only five years later. Till then, it was neither feasible nor permissible for the auction purchaser to approach the UPSIDC. Given these circumstances, the order directing that the transfer charges were to be recovered as of 11.11.2005 is reasonable. It was further submitted that the learned Single Judge dealt with the submission with respect to whether the matter was a BIFR covered case or not, and his opinion is sound and does not call for interference. The Court would first consider the issue whether concessional charges towards sub-division and transfer are recoverable by the UPSIDC. The relevant extract of UPSIDC also reads as follows:

> *"6.06 **TRANSFER** – means disposal of controlling interest in the venture by the existing allottee. Corporation charges transfer levy while approving cases of 'transfer'.*

9. In this case, the endeavour of the learned senior counsel is that it is only in the event the BIFR directs auction of property that the UPSIDC would consider and grant concessional charges. This Court is of the opinion that this narrow and constrained interpretation sought to be advanced, cannot be accepted. Concededly, the company underwent a long BIFR procedure in which all auction stood rehabilitated and were considered. The BIFR thereafter was of the opinion that since rehabilitation was not possible, the company ought to be wound-up. In the present case, the auction sale conducted by the OL – and subsequently confirmed by the Court is meant to augment the company under liquidation and facilitate discharge of its

liability towards creditors. Even the UPSIDC appears to be a creditor which is awaiting payment of its dues. Having regard to this circumstance, the Court is of the opinion that the impugned order, to the extent it states that the UPSIDC policy towards concessional transfer charges/sub-division charges, being recoverable in the present case is not erroneous.

10. As far as the second aspect is concerned, it is noticeable from the factual narrative itself that the bid was finalized and the entire amounts payable on 11.11.2005. The bidders had moved an application in 2006 which is pending; subsequently, they moved two further applications. All these were considered and disposed of on 18.08.2010. Till then, the position as to the status and rights of auction purchasers and the other party who were to share plot were inchoate. In other words, it was not possible for them to approach the UPSIDC or any other authority, claiming to be the rightful owner. In other words, the pendency of the application, which was ultimately accepted meant that the sale was confirmed as on 11.11.2005. The learned Single Judge gave effect to that factual reality in stating that the transfer charges as determined by him (applicable in BIFR cases) would be recovered by the UPSIDC as on 11.11.2005. This Court further notices that without the confirmation order, the auction purchaser or any other successful bidder's application claiming ownership would have been itself suspect.

11. In the light of the above discussion, the UPSIDC's insistence that the amounts would be recovered only from the date of the application, at least in the circumstances of this case, is unacceptable. To tend credence to such an argument would mean that where an auction purchaser bonafidely exercises its right to purchase property in a sale which is subject to confirmation subsequently, the factors of time consumed by Court would also visit such

party adequately. Consequently, we find no reason to differ with the view of the learned Single Judge that the amounts are to be recovered as on 11.11.2005 – towards transfer charges as well as sub-division. The appeal is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

MARCH 10, 2016/ajk