IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **17.03.2014**

CORAM

THE HONOURABLE **Mr. JUSTICE R.SUDHAKAR**

C.A. NOS. 135 OF 2012 & 1154 & 1155 OF 2013
IN
C.P. NO. 141 OF 1999

R.SUDHAKAR, J.

This order relates to Lot-B, which are movables situate at Boothathankettu Barrage, Kothamangalam, Eranakulam District, Kerala.

2. Sale of the above property is being taken up pursuant to order dated 20.2.14, whereby this Court directed paper publication in New Indian Express, Daily Tanthi and Malayala Manorama. The property in issue, which are movables, as contained in Annexure-B of the report submitted by the Official Liquidator enclosing the report of M/s.ITCOT Consulting & Services Ltd., who has submitted its valuation report.

3. The movables are primarily plant and machinery for hydro power generation. The company in liquidation wanted to establish a power generation unit and had procured machineries, viz., AC Generators, electric panel for AC generators, gas circuit breakers, transformers, EOT crane structures and such articles, used for hydro power generation. These equipments appear to have been manufactured between 1994 and 1997 and were procured by

the company in liquidation in the year 1999. These equipments have not been installed, but kept in open yards at Boothathankettu Barrage. From the report of M/s.ITCOT, it is clear those equipments have not been installed and are kept as such for more than 15 years without erection. Consequent to the order of this Court for sale of the movables, the report filed by M/s.ITCOT shows that the valuation has been taken up considering the age of the equipments, usage of the equipments, condition of the equipments, re-usability of the equipments, scrap value of the equipments and market value of the equipments. Insofar as marketability of the movable asset is concerned, it will be useful to refer to the specific part of the report, which is reproduced hereunder :-

> *"It was observed from the visit that the equipments were kept in open yards and some were kept inside the AC sheet roofed shed. Equipments such as steel drums and steel frames kept in open yards (close to Bhooththankettu barrage) were badly affected by weather and founded in rusted condition.*
>
> *The equipments, i.e., AC Generators, Penels, Lubricating oil system kept inside the open shed were covered with polythene covers and rest of the equipments, i.e., transformers, pressure reduction unit, dewatering pipes, EOT crane structural's are kept in open yard close to AC shed. Being kept in open to sky condition, lot of plants were grown over these machines.*
>
> *It was observed from the visit that these power generating equipments are "tailor made" for specific Hydro Electricity Project of 4 MW capacity and as such these equipments can only be used for such specification/parameter requirements happens.*
>
> *The machineries lying in the premises are valued based on the market enquiry, condition of equipments, types of buyers of these machines.*
>
> *It may be noted that the cost involved in the transport, repairing/refurbishment of these machines may not be commensurate with the net return/benefits derived from using these old machines.*
>
> *During the enquiry with the officials from the Electricity Board that the*

> *generators lying in the premises are obsolete and these machines would be useful only to certain buyers who are in need of such machines. The availability of spares for these machines is also doubtful. Those these are physically in a machine form, the future usage of thee machines in the same form is limited."*

Further, the valuation has been given on the movables on "as is where is condition".

4. Consequent to the sale notice, two persons have submitted their offers, i.e., Mr.E.A.M.Asharaf and M/s.Sree Saravana Engineering, along with earnest money deposit of Rs.23,00,000/= (Rupees Twenty Three Lakhs only) by way of Demand Draft. Mr.E.A.M.Asharaf has made an offer for a sum of Rs.72,54,134/=, while M/s.Sree Saravana Engineering has made an offer for Rs.54,00,000/= (Rupees Fifty Four Lakhs only). After opening of the tenders, the Court invited both the parties to make further bids in open Court and pursuant thereto, M/s.Saravana Engineering, represented by Mr.Manikandan made the highest offer of Rs.100,00,000/= (Rupees One Hundred Lakhs – Rupees One Crore only) and that offer being the final offer. In the event of acceptance of the above bid of M/s.Sree Saravana Engineering, the said bidder also agreed to pay the balance amount of Rs.77,00,000/= (Rupees Seventy Seven Lakhs only) within thirty days from the date of acceptance of the offer.

5. The Court has considered the valuation report vis a vis the offer made by the highest bidder and has accepted the offer of M/s.Sree Saravana Engineering for the following reasons:-

> The machinery admittedly has been procured in the year 1999 and not being put to use for more than 14 years and they are lying in open yard. The valuation report states that grass and weeds have grown all over the machinery. The cost

involved in transport, repairing and refurbishing those machinery may not be commensurate with the net return/benefits derived from using these old machineries, which is a major factor that the Court has to consider. In that, it cannot be put to re-use and, therefore, the valuation has to be considered in the light of the usability of the machineries.

Nevertheless, since these equipments were manufactured during 1994-1997 and not being put to use and also the fact these equipments could not be put to present day use of hydro electric generation, is evident from the fact that no hydro electric generation unit is bidding for the machinery, makes it clear that it has become old machinery, unfit for re-use, but only for scrap purposes and that these two bidders are bidding for the machines apparently to make use of the same only for scrap purposes.

6. This Court, taking note of the report of M/s.ITCOT, which clearly states that there is no marketability for these goods and it cannot be refurbished or repaired for further use and also the long period of time that has elapsed over non-use of these machineries, and also the reasons as assigned above, this Court is of the considered view that no purpose will be served by prolonging this issue to get higher bids, which is evident from the fact that inspite of paper publications ordered by this Court over the last two times, no bidder has come forward to bid a higher value other than the above two bidders. Therefore, this Court is inclined to accept the offer as made by M/s.Sree Saravana Engineering for a sum of Rs.100,00,000/= (Rupees One Hundred Lakhs only – Rupees One Crore only). The sale shall stand confirmed subject to the

payment of the balance amount of Rs.77,00,000/= (Rupees Seventy Seven Lakhs only) by M/s.Sree Saravana Engineering, within a period of thirty days from today.

7. Office is directed to return the demand draft submitted by Mr.E.A.M.Asharaf towards earnest money deposit, back to him on proper authentication and acknowledgement.

8. The Official Liquidator is directed to deposit the EMD amount of Rs.23,00,000/- deposited by M/s.Sree Saravana Engineering, the successful bidder, in the Indian Bank, Madras High Court immediately. He is also directed to deposit the balance amount of Rs.77,00,000/- to be deposited by M/s.Sree Saravana Engineering, by the successful bidder in the Indian Bank, Madras High Court immediately on deposit.

9. Insofar as the property mentioned in Lot-A situate at Pillaiyarkuppam, Bahour Commune Panchayat, Pondicherry, is concerned, as of today there is no offer. Therefore, the Official Liquidator is directed to issue fresh paper publication in one issue of English Daily "New Indian Express" and one issue of Tamil Daily "Dinamani" calling for bids to be submitted on or before 7th April, 2014 and further indicating that the bids submitted will be opened before the Court on 9th April, 2014 at 2.15 p.m. It may also be clearly mentioned that bidders desirous of inspecting the property can inspect the property on or before 7rd April, 2014 after due intimation to the Office of the Official Liquidator.

10. C.A. No.135 of 2012 is ordered in the above terms. List the C.A. No.135 of 2012 for

further orders on 9th April, 2014.

11. C.A. Nos. 1154 and 1155 of 2013 are dismissed as infructuous in view of the sale effected in respect of many of the properties of the company in liquidation.

Index: No **17.03.2014**
Internet: Yes

Office to note:

Issue copy immediately

GLN/ts

R.SUDHAKAR, J.

GLN

C.A. NO. 135 OF 2012
C.A. NOS. 1154 & 1155 OF 2013
IN
C.P. NO. 141 OF 1999

17.03.2014