

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

COMPANY APPLICATION No.388 of 2015

in

COMPANY PETITION No.57 of 1999

ORDER:

By order dt.26-04-2001 in C.P.No.57 of 1999, this Court ordered winding up of M/s.Sirsilk Limited and appointed the Official Liquidator attached to this Court as Liquidator. Pursuant thereto, the possession of the entire properties of the company in liquidation were taken over by the Official Liquidator and plant and machinery, furniture and vehicles situated at Sirpur Kaghaznagar, Adilabad District were sold by the Official Liquidator and the same was also confirmed by this Court on 07-04-2004.

2. By order dt.24-11-2008, made in CA.No.1449 of 2008, this Court appointed Sri Dr.S.Chandrasekaran, Vikrampur, Secunderabad, whose proprietor is the applicant herein, as registered Valuer for valuing Ac.426.84 cents of land of the company in liquidation together with its structures standing thereon. Accordingly, valuation work was done and final valuation report was submitted on 18-03-2009 before this Court. That report was taken on record and by order dt.18-03-2009, the Official Liquidator was directed to take all such measures which are necessary for disposing of the assets of the company under liquidation.

3. Subsequently, by order dt.26-03-2009 while clarifying the above order, this Court directed the Official Liquidator to sell the properties of the company in liquidation except the company's quarters. Pursuant to this order, the valuer divided the un-encroached property lot-wise for feasibility of sale and land admeasuring Ac.456.37 cents and buildings thereon (except company's quarters) were put to public auction by dividing them into 8 lots and auction report was placed before this Court by the Official Liquidator by his report dt.17-06-2009.

4. This Court, by order dt.08-10-2009 in C.A.No.343 of 2009 accepted the highest offers in respect of lot Nos.2, 3, 5, 6, 7 and 8. However, M/s.Shalivahana Power Corporation Limited, who was the highest bidder in respect of lot Nos.7 and 8 represented that in respect of lot No.8, the land admeasuring Ac.91.21 cents in Sy.No.103 at Chintagudem village was not available as per the pahani.

5. Pursuant thereto, the Official Liquidator sought a clarification from the applicant as regards shortage of land pointed out by the highest bidder. The applicant by letter dt.29-03-2010, while enclosing report of the Village Revenue Officer, informed that there were certain discrepancies. Since discrepancies were required to be clarified/rectified by the applicant, the Official Liquidator requested the applicant to do the needful. In response to which the applicant by letters

dt.29-03-2010 and 23-06-2010 informed the Official Liquidator that for conducting survey and marking boundaries for the entire un-encroached land survey number-wise, he may charge Rs.6,000/- to Rs.7,000/- per acre and usual time required would be 45 days for 100 acres.

6. Thereupon, C.A.No.632 of 2010 was filed by the Official Liquidator stating that in view of the final report submitted by the applicant on 18-03-2009, which did not contain actual extent of land available in each survey number, the applicant may be directed to furnish the actual extent of vacant land available in each survey number since it was part and parcel of the work assigned to him by this Court.

7. Ultimately, on 15-11-2010, this Court disposed of the said application taking note of the fact that there were certain lapses in the survey conducted earlier, that the applicant was willing to conduct survey afresh and directed the Tahsildar, Kaghaznagar, Adilabad District as well as the Revenue Divisional Officer to depute the Mandal Surveyor and other staff along with records to enable the applicant to conduct survey and fix the boundaries of the actual vacant/un-encroached land available in each survey number owned by the company in liquidation. This Court observed that “fee and other expenses for conducting the survey and fixing the boundaries as proposed shall be paid by the Official Liquidator from the funds of the

company in liquidation and on completion of the survey, the report shall be submitted before this Court.”

8. Thereafter the applicant completed the survey and submitted reports on 14-10-2011 and 01-12-2011.

9. The applicant then filed C.A.No.784 of 2011 seeking advance of Rs.25,00,000/- for carrying out the survey. This application was dismissed as not pressed in view of appointment of Director of Survey and Land Records in order dt.30-09-2013 in C.A.No.1960 of 2011 for conducting fresh survey and granting liberty by the applicant to file fresh application claiming the survey fee. He then submitted a bill on 22-11-2013 to the Official Liquidator claiming an amount of Rs.49,48,000/- towards fee for the survey conducted.

10. He also filed the present C.A.No.388 of 2015 to fix Rs.49,48,000/- as his fee towards the survey conducted pursuant to the order dt.15-11-2010 in C.A.No.632 of 2010 in C.P.No.57 of 1999.

11. It is pertinent to note that a sum of Rs.3,00,000/- was paid to the applicant by the Official Liquidator towards professional charges on 18-03-2009.

12. The Official Liquidator contended that the applicant is not entitled to any further fee, that the claim made by the applicant was not genuine and that he had not properly conducted

the valuation or survey. Thereupon, this Court passed an order on 31-08-2015 directing the Official Liquidator to nominate an auditor within one week and inform the same to the applicant. It was further directed that within four weeks of such nomination, the nominated auditor of the Official Liquidator and the auditor of the applicant shall sit together and reconcile the accounts and submit their joint report or individual reports.

13. One M/s.Padmanabha Rao and Company, Chartered Accountants were appointed for verification of the bills of the applicant and ultimately, a report dt.23-11-2015 was submitted by the said Chartered Accountants firm stating that the applicant should be paid Rs.42,16,853/-, which was also accepted by the applicant.

14. However, the Official Liquidator filed a further report on 21-11-2016 stating that applicant's survey was found defective and he was already paid Rs.4,05,000/- (including Rs.3,00,000/- paid by the Official Liquidator and Rs.1,05,000/- paid by bidders).

15. Applicant stated that an amount of Rs.3,00,000/- paid earlier was not connected with the present bill and it was pursuant to the order in C.A.No.1449 of 2008 dt.24-11-2008. He also stated that the amount paid by bidders was pursuant to the orders of this Court in C.A.No.1960 of 2011 dt.30-12-2012 but not connected with the present bill.

16. Ultimately, on 03-01-2017, this Court passed an order in this application to the effect that though the work executed by the applicant was found defective, the report showed that he did some work and since he produced some supporting vouchers, and the Chartered Accountants M/s.Padmanabha Rao computed that applicant is entitled to Rs.42,16,853/- on verification of the accounts, it is just and necessary to entrust the job to one Sri Nori Subrahmanya Sastri, a valuer, for rendering his opinion on the amount claimed by the applicant for the work alleged to have been done by him though it did not ultimately yield any result. The said valuer was directed to submit his opinion on the following points:-

“1. Whether the payment of Rs.3,00,000/- made earlier to the applicant by the Official Liquidator pursuant to the orders of this Court was for the present work only and whether the applicant is entitled for any further amount?

2. Whether the items of work claimed by the applicant are involved in the execution of the work and whether the amounts claimed against each item of work is justified according to the rates prevailing at that time?

3. If the applicant is found to be entitled for the work done, what would be the reasonable amount that can be paid to him on the basis of claim made by him, even though the work was not ultimately useful?”

17. It is not in dispute that the said valuer appointed by this Court has filed a report on 06-03-2017 answering the above points in the following way:

“1.The payment of Rs.3,00,000/- made earlier to the Applicant (Dr.S.Chandra Sekharan) by the Official Liquidator pursuant to the orders of this Court was not for the present work as seen by Bill dt.16.2.09 claimed by M/s.Serwel Associates clearly indicates for Valuation of 461 Acres and quarters and buildings. The Applicant was asked to fix boundaries of M/s.Sir Silk properties by the Hon’ble Court in their order dt.15.11.2010. As such the Applicant is entitled for further amount.

2. The work of marking of boundaries etc. involves site clearing also which was done by the Applicant. The claim of the Applicant is justified for the reasons given in the Annexure I, and the amount of clearing the site with Proclaim is reduced to Rs.13,44,614/- by the Chartered Accountant and accepted by the Applicant, as per the Chartered Accountant’s Report.

3. In my opinion the Applicant is entitled for the work done, and the reasonable amount for which the Applicant entitled is Rs.30,59,968/- as per the justification given in the Annexure II. The work done by the Applicant can be made useful if the Applicant Dr.S.Chandra Sekharan is directed to fix the boundaries as per the Survey and also the lots, and hand over them to the Official Liquidator before making any payment.”

18. He also calculated that the applicant would be entitled to Rs.30,59,968/- towards cost of survey etc. after arriving at the said figure by 3 different methods.

19. Though Official Liquidator and Sri P.V.Markandeyulu, learned counsel for 2nd respondent opposed for payment of any amount to the applicant, I cannot accept their objections.

20. Having regard to the report of the valuer Sri Nori Subrahmanya Sastri and findings therein, and fact that the Chartered Accountant appointed Official Liquidator himself fixed a higher amount of Rs.42,16,853/-, and since report of Sri Nori Subrahmanya Sastri is made after a site visit and after hearing both sides, I hold that the applicant is entitled to and shall be paid by the Official Liquidator a sum of Rs.30,59,968/- within three (03) weeks from today with interest @ 9% p.a. from 01-12-2011 till date of payment.

21. This Company Application is allowed accordingly. No costs.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-08-2017
Vsv

