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Sr.No.211

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12537 of 2016(O&M)
Date of decision:9.03.2017

Hartron Communications Ltd.

.....Petitioner

versus

Pegasus Assets Reconstruction Pvt. Ltd. and others

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr.Anand Chhibbar, Sr. Advocate with
Ms. Ria Bansal, Advocate
for the petitioner.

Mr. V.K.Gupta, Advocate
for respondent No. 1.

Mr. Deepak Sabharwal, Advocate
for respondents No. 2 and 3.

Rakesh Kumar Jain, J.(Oral)

Initially two prayers were made in this petition. Firstly, for issuance of a writ in the nature of a mandamus directing respondent No. 1 which is a reconstruction company to confirm the sale, issue a sale certificate and handover the physical possession of the property in question and secondly for the issuance of a writ in the nature of a mandamus seeking a direction to respondent No. 1 to deposit the dues of respondents No. 2 and 3, as mentioned in the auction notice dated 22.04.2016, so that the petitioner may get the clear title of the purchased property.

Shorn off the unnecessary details, it would be suffice to mention that respondent No. 1 purchased the assets and liabilities of the company, namely, M/s Unicorp Industries Limited, in liquidation before the Delhi High Court. After purchasing the assets, respondent No. 1 issued a public notice of the sale of the assets of the company in liquidation and

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described the property as under:-

Description of property	***Claims, if any, which have been put forward against the property and any other dues known to Secured creditor and value***	***Reserve Price below which the property will not be sold (in Lakhs)***	***Earnest Money Deposit (EMD) in Lakhs***
All these pieces and parcel of land admeasuring 7409-50 sq.mtrs. Bearing plot No. UV-242/243 situate at Phase IV Udyog Vihar, District Gurgaon in the State of Haryana and bounded as under:- On or toward the North: Road On or toward the South: Nallah On or toward the East: Plot No. 244 On or toward the West: Plot No. 241 Together with all buildings and structures thereon	HSIIDC Dues • EDC Charges amounting to Rs. 50,53,279/- plus interest @12% from 1.1.2015 • Maintenance Charges amouning to Rs. 18,99,203/- plus Interest @12% w.e.f.14.9.2010 • Lease regularization fees Rs.44,45,700/- plus interest @12% w.e.f 11.7.2015 plus service tax Municipal Corporation:Rs. 97,1224 as on 30.09.2015	Rs.4329	Rs. 432.90

The property was to be sold on "*as is whereas basis"* and *"as is what is basis"*. The petitioner was the highest bidder in the auction which was accepted by respondent No. 1. After the bid was accepted and the petitioner had paid 25% of the bid amount, respondent No. 1 was dilly dallying in accepting the remaining 75% of the balance amount and issuing the sale certificate. Consequently, the present petition had to be filed by the petitioner.

During the pendency of the writ petition, the petitioner deposited the entire sale consideration under the orders of the Court and respondent No. 1 issued the sale certificate on 22.11.2016. In the sale certificate, the following averments were made:-

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> *"The sale of the Scheduled property is being sold strictly on "AS IS WHERE IS & AS IS WHAT IS" basis to all known and unknown encumbrances (except the encumbrance which has been mentioned in the Sale Notice Dated 22.04.2016 and which shall be paid by Pegasus from the sale proceeds received)"*

According to the aforesaid averments, the petitioner was liable to pay for all known and unknown encumbrances except for the dues which were mentioned in the public notice dated 22.04.2016(Annexure P-4) i.e. in respect of the dues of HSIIDC and Municipal Corporation, Gurgaon.

Counsel for the respondent has submitted that the petitioner has not come to the Court with clean hands as they had promised to withdraw the writ petition vide letter dated 22.11.2016 in case the sale certificate is issued and physical possession of the property in question is handed over. It is further submitted that as soon as they received the letter dated 22.11.2016 from the petitioner, sale certificate was simultaneously issued on the same day. Therefore, the petitioner is not entitled to pursue the second prayer made in this petition for issuance of a direction to respondent No. 1 to pay the dues to respondent Nos. 2 and 3.

Counsel for the petitioner in this regard has submitted that the second prayer made in the petition had to be pursued because the petitioner has been asked by the HSIIDC and the Municipal Corporation, Gurgaon to pay the dues as mentioned in the public notice threatening that in case of failure, the petitioner would not be given NOC by the HSIIDC and the sewerage and water connection by the Municipal Corporation.

After hearing learned counsel for the parties and keeping in view the facts and circumstances of the case, the only issue which arises for

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adjudication by this Court is "*as to whether respondent No. 1 is liable to pay the dues to respondent Nos. 2 and 3?"*

While describing the immovable property in the public notice dated 22.04.2016, it was specifically mentioned that there are dues of HSIIDC and Municipal Corporation which were to be paid by the company in liquidation, taken over/purchased by respondent No.1. The said liability has been owned by respondent No. 1 while issuing the sale certificate as has been referred to in the earlier part of this order, therefore, respondent No. 1 can not be allowed to shy away from making the payments to respondents No. 2 and 3 for the purposes of clearing the title of the petitioner so that the property purchased by the petitioner for an amount of ₹43 crore may be put to some use otherwise, in case of non-payment of dues to respondents No. 2 and 3 the entire deal made by the petitioner would merely be a paper transaction and the land purchased by it cannot be put to any useful purpose. Hence, I find merit in the contentions raised by counsel for the petitioner and accordingly, the present petition is hereby allowed and a direction is issued to respondent No. 1 to make the payment of respondent Nos. 2 and 3 within a period of six weeks from the date of receipt of certified copy of this order and in case the payment is made as directed, respondents No. 2 and 3 are also directed to issue necessary certificate to the petitioner.

It is needless to mention that the petitioner shall also submit the certificates of deducting the TDS at the time of making payment to respondent No. 1 and shall also make good the deficiency of payment if any, pointed out by respondent No. 1, within a period of 15 days.

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Counsel for the petitioner, after obtaining instructions from the Managing Director of the Company Mr. Sanjit Malik, submits that all other cases pertaining to this issue shall be withdrawn by the petitioner as soon as the payment is made by respondent No. 1 to respondent Nos. 2 & 3.

[Rakesh Kumar Jain]
Judge

9th March, 2017

Shivani Kaushik

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*