HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPLICATION NO. 776 OF 2016

IN

R.C.C. No.122 OF 2000

ORDER:

The company application is filed seeking permission of this Court to confirm the sale of the fixed assets and the plant and the machinery in favour of M/s. Chinnamile Projects Pvt., Ltd., by accepting the offer made by it.

The facts are not in dispute. The respondent company came to be wound up by orders of this Court, on 22.01.2001, in terms of the recommendations made by the BIFR in RCC No.12 of 2000. Prior thereto, the applicant Corporation, in exercise of its power under Section 29 of the State Finance Corporation Act, had seized the assets of the company in liquidation and this Court permitted the applicant vide its order, dated 01.07.2000, in C.A. No. 54 of 2001, to remain outside the liquidation proceedings. The following conditions were imposed on applicant-corporation, with respect to the disposal of the assets –

1) The Official Liquidator shall be allowed to have inspection of the company's properties and assets and take inventory as and when required;
2) Permission of this Court shall be obtained before the sale of the properties, movable and immovable, is confirmed or finalised;
3) The applicant shall undertake to deposit and shall deposit the workmen dues as and when quantified by the Official Liquidator as per the provisions of Section 529(A) of the Act;
4) Whatever surplus remains after the sale and realisation of the dues of the secured creditors and the workmen as per law, the balance sale proceeds shall be made available to the official liquidator for being dealt with, in accordance with the provisions of the Companies Act and the Rules.

Initially, efforts were made to sell the assets and in that process, one M/s. ASR Constructions emerged as the successful bidder and this Court in C.A.No.1569 of 2003 permitted the sale to be confirmed in favour of the said bidder subject to payment of sale consideration before 31.03.2004. However, the said bidder failed to adhere to the time frame with respect to the payment of the sale consideration and the Applicant Corporation forfeited the EMD, which resulted in bidder filing O.S.A.No.51 of 2005 and 53/2005 against the orders in Company Application No.284 of 2005 and 2523 of 2005 and the same were dismissed on 22.10.2005. A fresh advertisement was issued by the Applicant-Corporation on 05.07.2005, pursuant to which an offer was received from one Sri P. Narayana, for purchase of plant and machinery, on 100% down payment basis payable within sixty days, which was accepted after due negotiations. However, M/s. A.S.R. Constructions, earlier participant in the auction, filed W.P.No.26673 of 2005, which ultimately came to be disposed of on 24.12.2014 directing the Applicant-Corporation to refund the EMD paid by it. In the result, the sale pursuant to the notification came to be abandoned. Finally, once again advertisement was issued on 24.02.2016 pursuant to which offers were received only from M/s. Chinnamile Projects Pvt. Ltd., and M/s. Trident Fine Chem & Lab., Bolaram, and the offer of M/s. Chinnamile Projects Pvt. Ltd., was accepted at Rs.96,00,000/- and the Applicant being a finance corporation has also agreed to provide industrial loan facility and an agreement came to be entered into. In those circumstances, the Applicant prays approval of this Court to confirm the sale in favour of M/s. Chinnamile Projects Pvt. Ltd.

The Official Liquidator filed a report. At the outset, it may be noted that whenever an application is made by a company, which is under liquidation, the Official Liquidator is required to take a stand for and on behalf of the company in liquidation, in conformity with the provisions of the Act and the Rules and file a counter affidavit, rather than filing a report. A report is required to be filed by the Official Liquidator when he is seeking alternative instructions / orders from the Company Court. Technically, the Official Liquidator is required to function under the supervision of the Company Court. In those circumstances, the report filed by the Official Liquidator in the present case, as far back as on 27.06.2016, is treated as a counter affidavit.

In the report / counter affidavit, it is stated that the valuation of the assets of the company in liquidation, as on 06.07.2015, is Rs.120.87 lacks, and in those circumstances, accepting the offer of M/s. Chinnamile Projects Pvt. Ltd., through negotiations on 13.04.2016 for a sum of Rs.96,00,000/-, is unjustifiable and prayed to reject the offer. It is also yet another objection, which is raised in the counter affidavit, that the Applicant-Corporation had released combined sale notice, comprising 16 companies / units including the company in liquidation at item number 7, without disclosing the minimum upset price in the sale notice. Yet another objection raised by the Official Liquidator is that the proposed purchaser is being extended loan facility by the applicant, thereby indicating that the proposed Corporation such is not receiving any money. In those circumstances, the Official Liquidator prays for rejection of the request of the applicant Corporation.

Having considered the respective submissions, at the outset, it may be noted that the respondent-Official Liquidator has not disputed the specific assertion of the applicant that at every stage of negotiations, the Official Liquidator's office was involved and no objection as such was raised at that time. Learned Official Liquidator fairly concedes on this aspect and submits that in fact, he had nominated his representatives to be present during the negotiations. It is not in dispute that with respect to the offer received by the applicant there is no better offer than the one, which was received by the applicant.

In those circumstances, the objection of the Official Liquidator is not sustainable. So far as extension of loan facility by the applicant corporation, it may be noted that applicant Corporation is incorporated for rapid industrialisation in the State and created under the statute of the State Financial Corporation Act. As a secured creditor, the Corporation has already been permitted to remain outside the winding up proceedings and this Court, vide its orders in C.A.No.54 of 2001 had allowed the corporation to sell the assets subject to certain conditions. It is not the case of the Official Liquidator that there are any dues payable to the workers. The claims of any other creditors, consideration of claims or settlement or making arrangements with respect to the other creditors would arise only after the preferential claims of the secured creditors are satisfied, however, subject to the workmen dues, if any. In those circumstances, the objection of the Official Liquidator, even on that count, cannot be sustained.

The very business of the applicant is financing the industries, which is an independent business activity, being undertaken in terms of the mandate given to it under the SFC Act, the proposal of the applicant, being the financier of the respondent, the sale of the fixed assets of the plant and machinery of the respondent company, for the sale consideration of Rs.96,00,000/- cannot be found fault and hence there cannot be any objection from the Official Liquidator on that count.

For the above reasons, the Company Application is allowed permitting the Applicant Corporation to finalise the sale of the fixed assets and the plant & machinery in favour of M/s. Chinnamile Projects Private Limited, for a sale consideration of Rs.96.00 lakhs, with a down payment of Rs.36.00 lakhs, payable in thirty days and the balance of Rs.60.00 lakhs on loan basis payable in five years period with a moratorium of six months with applicable collateral security for the line of activity. Accordingly, the sale is confirmed in favour of M/s. Chinnamile Projects Private Limited. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dated:18.06.2018.
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