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

\+ **CO.APP. 10/2018**

% Date of decision: 23rd May, 2018

UTTAR PRADESH FINANCIAL CORPORATION ..... Appellant
Through Mr. Sonal Kumar Singh, Mr. Gunjan Gupta and Mr. Rajat Dasgupta, Advs.

versus

OFFICIAL LIQUIDATOR & ORS. ..... Respondents
Through

**CORAM:**
**HON'BLE MR. JUSTICE SANJIV KHANNA**
**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

**SANJIV KHANNA, J. (ORAL):**

**CM Nos. 21729-30/2018**

Exemptions allowed subject to all just exception.

The applications are disposed of.

**CO.APP. 10/2018 and CM No. 21728/2018 (stay)**

This intra court appeal under Section 483 of the Companies Act 1956 ('Act' for short) read with Section 10 of Delhi High Court Act 1966 impugns order dated 13.03.2018 passed by the Single Judge in C.A. No. 1258/2006 in Company Petition No. 307/1999, Minnie Pan (India) P. Ltd. vs. M/s Eurobike Ltd.

2. The appellant-Uttar Pradesh Financial Corporation ('Corporation' for short) is a statutory Corporation under the State Financial Corporations Act, 1951.

3. Corporation had advanced Working Capital Term Loan of

Rs.50 lakhs, Fixed Asset Term Loan of Rs.240 Lakhs and Lease Assistance of Rs.200 Lakhs to M/s Eurobike Ltd., the first respondent and company under Liquidation. To secure the loan, the company under liquidation had created an equitable mortgage by deposit of original title deeds of property /Plot No. C-06, Phase – II, Noida, District Gautam Budh Nagar, Uttar Pradesh ('the property' for short) with the Corporation on 31.03.1995 and had also executed agreement and hypothecation deeds dated 31.03.1995 and 24.01.1996.

4. Company under liquidation was directed to be wound up in 1996. Company under liquidation was unable to pay dues of Corporation. Corporation coming to know about the winding up order had filed CA No. 1853/2001 to remove hypothecated plant and machinery valued to be Rs.5.21 crores. This application was disposed of vide order dated 13.12.2001 recording that the Official Liquidator had no objection if the Corporation was permitted to remove and take possession of the plant and machinery. No objection on behalf of Allahabad Bank was also recorded. This order had also disposed of CA No. 1542/2001, another application filed by the Corporation praying that Official Liquidator should dispose of the property (C-06, Phase – II, Noida, District Gautam Budh Nagar, Uttar Pradesh). Directions were issued to dispose of the property by way of public auction and sale proclamation would be drawn up and issued by the Corporation. Liberty was granted to the Official Liquidator to move the court on the administrative side for fixing reserve price and settling terms of sale proclamation.

5. Subsequent order dated 03.10.2002 passed by the Company Judge records that the Corporation had prayed for an order, similar

to order passed in ***A.P. State Financial Corporation vs. Official Liquidator*, (2000) 7 SCC 291**. Corporation was permitted to stay outside the liquidation proceedings subject to the following conditions: (i) the Corporation would undertake to discharge the liability due to the workers, if any, under Section 529-A of the Companies Act; (ii) the Corporation shall inform the Official Liquidator about the proposed sale of the assets of the Company under liquidation over which it holds the Charge at least ten days in advance before the date fixed for receipt of tenders and (iii) the Corporation shall obtain prior permission of the Court before finalising the tenders.

6. Thereafter, the Corporation had published as many as seven sale proclamation in different newspapers, inviting bids on 'As Is Where Is Basis' from interested parties. Bids or suitable bids were not received.

7. Order dated 20.11.2003 passed by the Company Judge on the administration side records that one offer/bid had been received pursuant to the sale proclamation issued by the Corporation on 18.10.2002. Earlier inspite of seven attempts only one tender was received, which was not accepted being on the lower side. Four persons, namely, Sh. Dinesh Verma, Sh. Hem Singh Rana, Sh. Mohd. Tariq and Smt. Sadhna Kumari had initially made a joint offer of Rs.4,01,00,000/- which was increased to Rs. 4,11,00,000/- after the bidders were contacted by the Corporation. Mr. Dinesh Verma who was present in the Court on 20.11.2003 had raised the offer to Rs.4,25,00,000/-. The order dated 20.11.2003 thereafter records as under:-

"*Counsel appearing for the UPFC states that the offer made by the persons is reasonable and fair, which could be accepted. Counsel appearing for the O.L and the O.L, who is personally present in Court, also state that the said offer appears to be reasonable. Considering the entire facts and circumstances of the case and also the fact that even in spite of the seven earlier attempts, the property in question could not be sold and in the present attempt a near-about offer to the total valuation has been received and also in view of the fact that further delay in selling the property may result into further depreciation of the value of the property, the offer made by the aforesaid tenderer is accepted. 25% of the bid amount shall be deposited by the highest tenderers within 15 days from today and the balance of the bid amount shall be deposited within 90 days. The aforesaid amount shall be deposited by the tenderer with the UPFC, who shall, on receipt of the said amount deposit the same with the O.L. On payment of the entire bid amount, possession of the aforesaid property shall be handed over to the highest tenderers.*

*It is also made clear that all dues including the Government dues in respect of the property in question shall be payable by the auction purchasers from the date when the possession of the same is handed over to the auction purchasers. It is also made clear that the aforesaid sale is on" as is where is" basis. It shall be open to the auction purchasers to deploy their own security in the aforesaid property in addition to the security already provided.*"

8. Reading the aforesaid, affirms that the appellant Corporation had agreed to the bid and offer made. Accordingly, the court had directed that the bid should be accepted. It was a consent order.

9. We do not think that the appellant Corporation can be now allowed to dispute and challenge the above order and decision as bad

in law, for the Corporation wanted to stay outside the winding up proceedings. The Corporation has duly participated in the said proceedings and had made consent statement through their counsel which was accepted by the Company Judge. Notably the earlier order dated 03.10.2002 passed on the administrative side had recorded and accepted the Corporation's prayer to stay outside the liquidation proceedings subject to certain conditions.

10. Subsequent events would show that the appellant Corporation had thereafter acted on the basis of acceptance of the bid by them. Consequently, Corporation had executed the registered transfer /sale deed dated 26.10.2004 in favour of auction purchaser-M/s Real Contracts Pvt. Ltd. The sale consideration paid was accepted and credited in the accounts of the Corporation.

11. Order dated 20.11.2003 passed by the Company Judge records that the property was being sold at a price that was near about the total valuation as per the valuation report. The order states that all dues including government dues in respect of the property shall be payable by the auction purchaser from the date when the possession would be handed over to the auction purchaser. Thereafter, the order dated 20.11.2003 had directed and held as under:-

> *"Since an order is already passed by this Court directing the Official Liquidator to invite claims by issuing an advertisement, an up-to-date status -report shall be filed by the Official Liquidator on or before the next date indicating therein the position and status of the claims received and the action taken by the O.L on the said claims. It is also made clear that since the sale proclamation in the present case was issued by the UPFC and since the counsel appearing. for the UPFC also states that an accommodation could be given in the present case to the· auction purchaser to deposit the amount within the*

*extended time of 15 days and 90 days, the same is ordered considering the peculiar facts of the present case and this shall not be treated as a precedent for any other case."*

The above quotation states that the Official Liquidator would invite claims by issuing advertisement and thereafter, up-to-date status report would be filed. As the sale proclamation was issued by the appellant Corporation, who had also agreed to provide required accommodation, the auction purchaser would deposit the bid amount within the extended period of 15 days and 90 days.

12. Thereafter, the matter was taken up on the administrative side by the Company Judge on 29.07.2004. This order records that the auction purchaser has failed to deposit 75% of the bid amount within the stipulated time, but had brought demand draft for the said amount to the Court. The auction purchaser had agreed to pay interest @ 9% per annum for the delayed payment. The court accepted the said payment with interest @ 9% per annum and had thereafter recorded that the entire consideration had been paid. The sale in question in favour of the auction purchaser was confirmed and direction was given to the Corporation to hand over the possession of the property in question to the auction purchaser, namely M/s Real Contracts Pvt. Ltd. This order also records as under:-

*"Mr. Bansal has drawn my attention to an order dated 23rd November, 2003 passed in this case wherein it was made clear that all dues, including government dues in respect of the property in question shall be payable by the Auction Purchaser from the date when the possession of the same is handed over to the Auction Purchaser. It is, thus, clear that till the giving of possession of the property to the Auction Purchaser the liability to clear the dues would be that of*

*UPFC, including outstanding dues of Noida Authority, if any. It is, however, clarified that as far as transfer charges are concerned, the same shall be borne by the Auction Purchaser. UPFC shall issue necessary sale certificate and also execute documents of transfer etc. It is stated by learned. counsel appearing for the workmen as well as counsel for the O.L. that UPFC be directed to deposit the amount of sale consideration with the O.L. learned counsel for the UPFC submits that UPFC being a secured creditor is allowed to remain outside the winding up proceedings and he wants some time to argue on this aspect of the matter."*

The aforesaid quotation states and directs that all dues, including government dues from the date possession of the property would be handed over to the auction purchaser shall be payable by the auction purchaser. All dues including dues of Noida Authority, the superior lessor i.e. the owner of the plot, till handing over of the possession to the auction purchaser were to be borne and paid by the Corporation. However, transfer charges were to be borne by the auction purchaser. Pursuant to this order the Corporation as noted above had executed transfer /sale deed on 26.10.2004.

13. Corporation was therefore fully aware and conscious of the terms and conditions mentioned in the two orders dated 20.11.2003 and 29.07.2004.

14. In these circumstances, we are not inclined to accept the contention that the Corporation was not aware of the aforesaid orders and directions therein or there was inadvertence and mistake in the said orders. Corporation's contention that the Company Judge had gravely erred, as the Corporation had expressed their wish to be outside the winding up, is fallacious and unacceptable. Terms and conditions of transfer were clearly accepted and

thereupon implemented. Sale consideration was received by the Corporation and transfer deed was executed by them on 26.10.2004.

15. Noticeably the Corporation had belatedly filed an application seeking modification/clarification on the question of payment of dues to Noida Authority on 16.10.2006, two years after execution of the sale deed / transfer deed on 26.10.2004.

16. Impugned order after referring to orders dated 20.11.2003 and 29.07.2004, directs that Rs.1.71 crores deposited by the auction purchaser in the company petition which was kept in FDR, would be released to the Noida Authority. Corporation has been directed to pay Rs.1.56 crores to the Noida Authority within 12 weeks from the date of the order i.e. 13.03.2018. The transfer charges, it is directed would be paid by the auction purchaser and thereafter Noida Authority shall carry out the necessary mutation in the name of the auction purchaser within six months.

17. Learned counsel for the appellant submits that the Corporation had only received Rs. 4,25,00,000/- from the auction purchaser and their dues are much more and payment of any amount to Noida Authority would not be correct and justified. Contention is untenable in view of the terms agreed and acted upon by the Corporation. No doubt the property was mortgaged to the appellant Corporation but the property was owned by the Noida Authority created by the State of Uttar Pradesh. Noida Authority is the superior lessor, and in terms of the lease has first charge and right to claim their dues.

18. We have not been shown any clause in the lease agreement between the company under liquidation and the Noida Authority or otherwise under which the Corporation would have preference over

the dues of the Noida Authority. This contention of the appellant would therefore fail and is rejected.

19. At this stage, learned counsel for the Corporation submits that Official Liquidator is in possession of some funds on account of sale of other assets of the company under liquidation. It was submitted that dues of Noida Authority could be more than the sale consideration received. Impugned order does not deal with any such submission and issue. It will for the Corporation to move an application in case they seek payment of money available with the Official Liquidator or they claim limit of liability beyond sale consideration.

20. In the aforesaid observation, the appeal is dismissed. CM No. 21728/2018 for stay is dismissed as infructuous.

**SANJIV KHANNA, J**

**CHANDER SHEKHAR, J**

**MAY 23, 2018/b**