THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPLICATION No. 683 OF 2018
IN
COMPANY APPLICATION No. 820 OF 2014
IN
COMPANY PETITION No. 187 OF 2012

O R D E R:

This Application was filed by the applicant Canara Bank (hereinafter referred to as 'the bank – secured creditor') of M/s Lakshman Paper Mills Private Limited (hereinafter referred to as 'the company in liquidation') seeking confirmation of the sale of the property i.e. land and building, plant and machinery and other fixed assets, current assets in Survey No. 152/1, 153 and 152/2 situated at Z. Medapau, Mandapet Mandal, East Godavari District to the highest bidder M/s Lakshmi Engineering Enterprises.

The undisputed facts for the purpose of disposal of the Application, in brief, are that:

The 2nd respondent company under liquidation was registered under the provisions of the Companies Act, 1956 and the same was directed to be wound up at the instance of the creditor in Company Petition No. 187 of 2012 *vide* orders of this Court dated 21.02.2013. The applicant bank had sanctioned term loan, on two occasions, of Rs.315 lacs and Rs.512 lacs in January 2009 and the company in liquidation had offered its plant and machinery along with land as collateral security and mortgaged the immovable properties in favour of the applicant bank apart from providing other securities and properties of the company and the promoters of the company in liquidation had also offered their private properties as security by creating equitable mortgage thereon. Subsequently, the company in liquidation became a sick unit and their operations finally, came to a stand still. The account of the company in liquidation therefore, became a non-performing asset (NPA) and thus, proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) came to be initiated on 29.12.2013 and possession of the immovable properties was taken over on 05.02.2013, after following the necessary procedure prescribed therefor. In Company Application No. 820 of 2014, the applicant bank sought leave of the High Court under Rule 9 of the Companies (Court) Rules, 1959 to remain outside the winding up proceedings and to exercise the rights conferred on the securities of the properties as a secured creditor of the company in liquidation. The said Application came to be allowed on 11.08.2014 and the applicant bank was permitted to sell the properties in association with the Official Liquidator. The efforts made by the applicant between 2014 and 2018 were not successful and finally, pursuant to the auction notice issued on 23.10.2018, the 3rd respondent engaged in similar kind of business of the company in liquidation became the successful bidder by quoting Rs.7.01 crores as against the reserved price of Rs. 7 crores. The applicant had issued the sale confirmation letter on 26.11.2018 and the successful bidder – the 3rd respondent had deposited 25% of the bid amount on the even date and thereafter, the balance amount was also paid on 11.12.2018, thus, complying with the auction conditions in all respects. Inasmuch as the auction was conducted, the properties are required to be delivered to the successful bidder / auction purchaser and necessary documentation is required to be carried out to enable the latter to take possession of the property. Hence, the present Application was filed to permit the applicant to receive the balance sale consideration, appropriate the same and thereafter, register the sale certificate in favour of the highest bidder i.e. the 3rd respondent.

The auction purchaser filed I.A. 1 of 2019 detailing their participation and their becoming successful bidder in the auction and payment of Rs.7.01 crores to the applicant bank. It is asserted by the applicant in the I.A. that though they had paid substantial amounts, possession of the property was not given, on account of which, they were unable to utilise the property for the purpose for which it was acquired. The auction purchaser had also filed an affidavit before this Court setting out their experience in the paper industry with further assertion that the assets of the company in liquidation were bought by the auction purchaser to revive and run the company. They therefore, prayed for conformation of the sale.

A counter-affidavit was filed by the Official Liquidator, wherein, while admitting that the applicant bank had moved Company Application No.820 of 2014 and this Court granted permission for sale of the assets of the company, it is asserted that the applicant had failed to associate with the Official Liquidator in terms of the orders of this Court dated 11.08.2014 while conducting the auction. It is asserted that the Hon'ble Supreme Court in ***Pegasus Assets Reconstruction P. Ltd. v. M/s Haryana Concast Limited*** (Civil Appeal No. 3646 of 2011) had categorically held that a secured creditor is entitled to remain outside the winding up proceedings and can exercise the rights conferred in them as a secured creditor and sell the properties. However, they are required to associate with the Official Liquidator in the process of liquidating the securities. It is the assertion of the Official Liquidator that the applicant had failed to adhere to the procedure as laid down by the Supreme Court in terms of the Rules, thus, the sale cannot be confirmed. The Official Liquidator submits that valuation of subject property in 2014 was given as Rs.11 crores and now the same was reduced to Rs. 7 crores and it is not at all justifiable.

Sri Deepak Bhattacharjee, learned Senior Counsel for the applicant refuting the allegations of the Official Liquidator would submit that the Official Liquidator had set out the chronology of events starting from 19.11.2014, responding to the letter received from the Official Liquidator, how the applicant bank from time to time had kept the Official Liquidator informed with regard to valuation of the properties and the dates of auction to be conducted and how there was no response for the auctions conducted pursuant to the notice on 06.01.2015 and how the fresh valuation was obtained on 16.10.2017 from two valuers and the second auction notification issued on 10.11.2017 which also failed and thereafter, once again, conducting auction on 26.12.2018 and there being no response, once again, conducting yet another auction on 17.08.2018 which also did not yield any result as no bidder came forward and finally, auction conducted on 26.11.2018 was successful. The learned Senior Counsel asserts that at no point of time, the Official Liquidator neither raised any objection nor requested anything to be done from the applicant side and the allegation of the Official Liquidator that he was not kept in know of the sale of the assets was incorrect and the same is contrary to the material on record. He would further submit that the applicant bank, in the absence of a suitable purchaser, was forced to revalue the assets from time to time and the value of the machinery has deteriorated over the years on account of non-operation of the plant and machinery. It is further submitted that as the realisable value, as given by the valuers, was pegged at Rs.6.88 crores, and the distress sale value was estimated at Rs.6.07 to 6.34 crores, the applicant bank had fixed Rs. 7 crores as the reserve price. Since no bidder has come forward in the *e*-auction conducted pursuant to the notice dated 23.10.2018, and since the auction purchaser's offer was acceptable, confirmation of sale was done in favour of the auction purchaser, which had also complied with the terms of the auction by depositing the amount.

The learned counsel appearing for the auction purchaser would submit that the auction purchaser intends to revive the company and each day's delay would further complicate the matter and they are required to bring in additional capital of Rs.3 to 5 crores to make the unit operational. It is only on account of their experience and exposure in the industry the auction purchaser with an intention to revive the company had participated and the valuation offered by them is just and fair and hence, prays for confirmation of the sale forthwith in their favour.

Having considered the respective submissions and having perused the record and the material documents filed by the applicant, the assertion of the applicant bank that from time to time the Official Liquidator was kept in know of the developments is borne out of the record. The first letter from the Official Liquidator was on 19.09.2014 which was replied to by the bank on 07.10.2014 and thereafter, the next letter was from the Official Liquidator on 17.10.2014. There is one other letter on 21.01.2015 inquiring about the valuation which was furnished to the Official Liquidator on 29.01.2015. Thereafter, from time to time the Official Liquidator was being informed about the conditions and this is not necessary for this Court to set out all the details as they are part of the record. It is now well-settled that the role of the Official Liquidator is limited to the extent of ensuring protection of the workers' interests, in terms of Section 529-A of the 1956 Act (now repealed). This Court, while allowing Company Application No. 820 of 2014, after taking note of the legal position had permitted the applicant company to proceed with liquidating the assets in association with the Official Liquidator. Though it is the argument of the learned counsel for the Official Liquidator that this Court directed sale of assets by following the procedure prescribed under the 1959 Rules, practically, there being not much of variation with respect to the procedure prescribed under the SARFAESI Act and 1959 Rules, in the facts of the present case, the difference, if any in procedure is not of much consequence. There is no dispute that the auction was conducted in terms of the SARFAESI Act and the Rules and there was no allegation of any irregularity in conducting the auction. Though in 2014, the valuation of the assets was Rs. 11 crores, a perusal of the valuation report discloses that the valuation of the land remained same, however, that of the machinery has deteriorated which is but natural. On the directions of this Court, during the arguments, the applicant bank had placed on record the original letter sanctioning the loan in favour of the company in liquidation. It discloses that by the time the loan was proposed to be extended by the applicant bank, the company in liquidation was closed and they had huge dues payable to the Syndicate Bank - original financier. In other words, a part of the loan was extended to clear the arrears of the Syndicate Bank and the other part for expansion of the unit after revival. By the date of the applicant bank financing the company in liquidation, a part of the machinery was about eight-year old (originally the company was promoted in 1990s). It is but natural that machinery depreciates in value over the years and even under the Income Tax Rules, value becomes depreciated and becomes zero in eight years' time.

In the light of these aspects, it cannot be said that the valuation provided by the valuers with respect to unit, plant and machinery at Rs. 7 crores, in no way, is low and not justified. In the circumstances, the objections raised by the Official Liquidator are liable to be rejected and the sale deserves to be confirmed in favour of the auction purchaser - the 3^{rd} respondent.

The Company Application is therefore, allowed confirming the sale of the subject property in favour of the 3^{rd} respondent. The Official Liquidator is directed to take necessary steps therefor.

CHALLA KODANDA RAM, J

16^{th} July 2019

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