

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CAPP No. 2 of 2019 (O&M)
Date of decision : November 24, 2020

Asset Reconstruction Company (India) Limited
..... Appellant

v.

M/S Mahansaria Industrial Ventures Private Limited and others
..... Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present : Mr. V.K Sachdeva, Advocate
for the appellant.

Mr. A.K Chopra, Sr. Advocate with
Mr. Mayur Kanwar, Advocate
for respondents No.1 and 2.

Ms. Manisha Lav Kumar, Sr. Advocate with
Mr. Sahil Sharma, Advocate
for respondent No.3-State of Gujarat.

Mr. Karanvir Singh, Advocate
for respondent No.4-Official Liquidator.

Ajay Tewari, J

This appeal has been filed against the order dated 20.5.2019 whereby the learned Single Judge relieved the respondent-auction purchaser from the auction process and directed the appellant to refund the part sale consideration received by it with interest @ 10% p.a within a period of 30 days from the supply of certified copy of the order.

Brief facts are that land measuring 147.44 acres belonging to the borrower M/S JCT Limited was secured asset with various lenders. The interest of those lenders was acquired by the appellant-company, which then issued a notice under Section 13(2) of the Securitisation and Reconstruction

of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the Act”) to the borrower on 4.11.2015. In other proceedings, this Court by order dated 1.2.2016, admitted a winding up petition in respect of the aforesaid M/S JCT Limited and appointed an Official Liquidator and by a subsequent order dated 26.8.2016 directed winding up of the company. At that time, another parcel of 35.88 acres of land belonging to that company was in possession of the Official Liquidator and on 3.11.2016, the appellant filed CA No.597 of 2016 seeking direction from this Court to auction the total land, which was allowed by order dated 27.2.2017, and consequently on 7.8.2017, the appellant issued an auction notice for joint sale of the entire land measuring 183.32 acres under the provisions of the Act. On 18.10.2017, the respondent No.1-auction purchaser gave an offer of about Rs.104 crores which was accepted on 26.10.2017, and ultimately this Court by order dated 2.12.2017 allowed another CA No.296 of 2017 filed by the appellant for permission to effect the sale in favour of the bidder free from all encumbrances and subsequently on 6.12.2017, the appellant confirmed the sale in favour of the bidder. However, the respondent No.1-auction purchaser required the appellant to obtain an order in respect of another land measuring 0.60 acres contiguous to the previously sold land and put a condition that the balance amount would be paid only if this Court permitted the sale of that land also.

On 1.1.2018, the Gujarat State Sales Tax Department (Respondent No.3) filed a claim of Rs.268.28 crores before the Official Liquidator wherein it contended that under the Gujarat Sales Tax law it would have an overarching charge on the property, notwithstanding the provisions of the Act. Once that came to the notice of the respondent-

auction purchaser, it immediately balked. It was thereafter that the respondent-auction purchaser moved an application bearing CA No.184 of 2018 praying that in view of the stand of the State of Gujarat that not only it could have the claim of Rs. 268.28 crores but under its local law its right would supervene the rights of other creditors, the contract had been frustrated. On the other hand, the appellant filed CA No.176 of 2018 for permission to forfeit the part payment made by the respondent-auction purchaser on the ground that it had defaulted in making the remaining payment.

As mentioned above, the learned Single Judge having allowed the application of the respondent-auction purchaser, the appellant is before this Court.

It has been strenuously urged by the learned counsel for the appellant that once the sale was confirmed, the respondent-auction purchaser could not walk out and that the stand of the State of Gujarat flew in the face of so many judgments, as per which it has been clearly held that the Act would override other laws, and that in any case once the sale was confirmed by this Court, the State of Gujarat could not proceed against the land in question, and consequently the learned Single Judge erred in allowing the application of the respondent-auction purchaser. On the other hand, learned Senior Counsel appearing on behalf of the State of Gujarat has argued that infact the State law would override the Act and consequently the State of Gujarat had the right to appropriate the land to realise its dues. Learned Senior Counsel appearing on behalf of respondents No.1 and 2 has argued that the respondents (and/or rather even the appellant) had no knowledge about the claim of the State of Gujarat at the

time when the auction was conducted, and had this fact been in the knowledge of atleast the respondents, they would have never bid for this land. He has pointed out that during the pendency of this appeal, the respondents have purchased another piece of land and have started a unit there with more than 500 workers. He has also pointed out that subsequently in January 2020, the appellant again sought to put the land to auction but because in the notice the claim of the State of Gujarat was also reported, the appellant had not received even a single bid. Learned counsel for the appellant has accepted the above two factual assertions; viz; that at the time of the auction neither it nor the respondent-auction purchaser had any knowledge of the claim of the State of Gujarat, and that pursuant to the subsequent sale notice of January 2020, no bid had been received.

In our considered opinion, the order of the learned Single Judge cannot be faulted on principle. It must be kept in mind that the respondent-auction purchaser is a third party and was interested in purchasing land which was free from all encumbrances. It may be that the stand of the State of Gujarat is incorrect and that of the appellant is correct but the question is, whether the auction purchaser would have even bid for this land had he known about this cloud ? The answer to this has to be in favour of the respondent-auction purchaser. No third party would be interested in purchasing land in a State where the State itself is laying claim over it. Supposing the sale had indeed been completed, the factory set up and then one day the functionaries of the State of Gujarat came and sealed the property, it would have served as a death knell for the unit and it would have been very cold comfort to it that after a long litigation it may be able to redeem its land. As we have observed above, the issue is whether this

unknown encumbrance-good, bad or indifferent- could serve as a ground for novation of the contract. In the facts of the present case, we find it to be a good ground. The reference can be made to the judgment of the Supreme Court in the matter of ***Satyabrata Ghose Vs. Mugneeram Bangur and Co. and another, AIR 1954 SC 44*** wherein it was observed as follows :-

“9. The first paragraph of the Section lays down the law in the same way as in England. It speaks of something which is impossible inherently or by its very nature, and no one can obviously be directed to perform such an act. The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The wording of this paragraph is quite general, and though the illustrations attached to it are not at all happy, they cannot derogate from the general words used in the enactment.

This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do.”

The said judgment was followed by the Supreme Court in the matter of ***Delhi Development Authority Vs. Kenneth Builders and Developers Private Limited and others, (2016) 13 Supreme Court Cases 561*** wherein it was held as under :-

“ 33. The interpretation of [Section 56](#) of the Contract Act came up for consideration in [Satyabrata Ghose v. Mugneeram Bangur & Co.](#)⁷ It was held by this Court that the word

“impossible” used in Section 56 of the Contract Act has not been used in the sense of physical or literal impossibility. It ought to be interpreted as impracticable and useless from the point of view of the object and purpose that the parties had in view when they entered into the contract. This impracticability or uselessness could arise due to some intervening or supervening circumstance which the parties had not contemplated. However, if the intervening circumstance was contemplated by the parties, then the contract would stand despite the occurrence of such circumstance. In such an event, “there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens.” This is what this Court had to say:

“9. The first paragraph of the section lays down the law in the same way as in England. It speaks of something which is impossible inherently or by its very nature, and no one can obviously be directed to perform such an act. The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The wording of this paragraph is quite general, and though the illustrations attached to it are not at all happy, they cannot derogate from the general words used in the enactment.

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it can very well be said that the promisor finds it impossible to do the act which he promised to do.”

Further the Supreme Court in the matter of ***Haryana Financial Corporation & Anr. Vs. Rajesh Gupta, 2010 (1) SCC 655*** observed as under :-

“19. In view of the aforesaid, we are of the considered opinion that the appellants/Corporation cannot be permitted to rely upon [Section 55](#) of The Transfer of Property Act, 1882. The appellants/Corporation failed to disclose to the respondent the material defect about the non-existence of the independent 3 'Karam' passage to the property. Therefore, the appellants/Corporation clearly acted in breach of [Section 55](#) (1) (a) and (b) of [The Transfer of Property Act](#), 1882. The aforesaid Section provides as under:

(1) The seller is bound-

(a) to disclose to the buyer any material defect in the property [or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

20. A mere perusal of the aforesaid provision will show that it was incumbent upon the appellants/Corporation to disclose to the respondent about the non-existence of the independent passage to the Unit. It was also the duty of the appellants/Corporation to inform the respondent that the passage mentioned in the revenue record was not fit for movement of vehicles. The appellant also failed to produce to the buyer the entire documentation as required by [Section 51](#) (1) (b) of the aforesaid Section. We are therefore satisfied

that the appellants/Corporation cannot seek to rely on the aforesaid provision of [The Transfer of Property Act, 1882](#).”

Resultantly, this appeal is dismissed.

There is, however, one more small point and that is that as per the prayer of respondent No.1-auction purchaser it was entitled to interest at the prevalent fixed deposit rate, but the learned Single Judge has awarded 10% interest. Learned Senior Counsel for the respondent-auction purchaser has strenuously argued that as per the contract the rate of interest was 10% and, therefore, there is no fault in the direction of the learned Single Judge to pay that rate of interest. That may be so, but by praying for interest at the prevalent FD rate, it can be legitimately said that the respondent-auction purchaser has itself given up its claim to the contractual rate of interest. Consequently, it is directed that the amount would have to be paid by the appellant with interest as per the prevalent fixed deposit rate in an nationalized bank.

(**AJAY TEWARI**)
JUDGE

(**RAJESH BHARDWAJ**)
JUDGE

November 24 , 2020

`kk' /pooja

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No