C.A.Nos.116 & 127 of 2022
in
Rev. A.Nos.1 &2 of 2022 in C.P.No.229 of 2004

SENTHILKUMAR RAMAMOORTHY, J

COMMON ORDER

This application is presented by a scrap dealer who evinces interest in purchasing machinery that was sold to the fourth respondent herein after obtaining permission from this Court.

2. The first respondent is the company in liquidation. It had taken machinery on lease (the Leased Machinery) from Sundaram Finance Limited. At the instance of the lessor, Sundaram Finance Limited, the Leased Machinery was sold to the fourth respondent under orders of this Court. The second respondent, the Indian Renewable Energy Development Agency Limited (IREDA), is a Central PSU which had a charge over other machinery owned by the company in liquidation (the Charged Machinery), which were arguably integrated with the machinery purchased by the fourth respondent. In such circumstances, the second respondent filed Review Application Nos.1 and 2 of 2022 seeking to review the order passed in Company A.No.251 of 2021. The review was filed primarily on the ground

that the machinery purchased by the fourth respondent from Sundaram Finance Limited is integrated with the Charged Machinery. Consequently, the review applicant contended that the Charged Machinery would be damaged in the process of dismantling and removal. The second respondent engaged the services of an expert to examine the feasibility of removal of machinery by the fourth respondent without causing significant damage to the Charged Machinery. Subject to the condition that the machinery should be removed in accordance with the methodology prescribed by such expert, the review applicant agreed to the removal of such machinery by the fourth respondent. The review applicant had attempted to sell the Charged Machinery unsuccessfully for more than a decade, including through the Debts Recovery Tribunal-I, New Delhi, and was of the view that it would be difficult to sell the Charged Machinery. Therefore, the review applicant, IREDA, decided to sell the Charged Machinery to the fourth respondent and received part consideration in advance from the fourth respondent.

3. In view of the statutory *pari passu* charge in favour of the workmen as regards the workmen's portion in the Charged Machinery, the review applicant submitted a memo and sought permission from this Court

to sell the Charged Machinery to the fourth respondent. For such purpose, the review applicant produced the valuation report in respect of the relevant assets. As per the said valuation report, the distress sale value of the consolidated assets, including the assets which were previously sold to the fourth respondent, was Rs.10.36 lacs. On the ground that the said machinery had depreciated in value and deteriorated in condition since the date of valuation, the review applicant/second respondent sought permission to sell the Charged Machinery at a price of Rs.7,10,00,000/-. By taking into account the cumulative facts and circumstances, such sale was permitted by this Court subject to a substantial part of the sale consideration being parked with the Official Liquidator so as to provide for payment towards the workmen's portion therein before the secured creditor takes its share. Pursuant thereto, the purchaser has made substantial progress towards dismantling and removal of the Charged Machinery. The present application is filed in these circumstances.

4. Learned counsel for the applicant contends that the sale is liable to be interfered with inasmuch as it violates Rule 273 of the Companies (Court) Rules, 1959. The applicant asserts that he is interested in

participating in the auction sale process and is ready and willing to offer the price of Rs.7,60,00,000/-, which is Rs.50,00,000/- more than the price paid by the fourth respondent. By drawing reference to the report dated 25.04.2022 of the Official Liquidator, the applicant states that the assets of the company in liquidation were valued at Rs.50 crores as on 20.10.2016 and, therefore, the sale of this asset for a price of Rs.7.10 crores is liable to be interfered with. The applicant also points out from the said report that earlier attempts at selling the assets were by the Recovery Officer, Debts Recovery Tribunal I, New Delhi and that there is no justification for a private sale at distress sale value in favour of the fourth respondent. The next contention of the applicant is that the second respondent is a Central PSU which is governed by guidelines issued by the Government of India with regard to the sale of assets. According to the applicant, the said guidelines were violated and that requisite permissions were not obtained by the second respondent. For all these reasons, it is stated that the sale is liable to be set aside.

5. The fourth respondent/purchaser points out that IREDA had endeavoured to sell the property on at least 10 occasions previously over a

period of more than a decade. The counter of IREDA in Comp. A.No.251 of 2021 was relied upon in such regard. The purchaser also points out that he remitted a total consideration in excess of Rs.10 crore towards purchase of the Leased and Charged Machinery and that any interference, at this juncture, would cause considerable hardship to him. On behalf of IREDA, it is submitted that the contention of the applicant is misleading because the 2016 valuation of Rs.50 crores was largely on account of the value of a large tract of land. IREDA points out that all requisite internal approvals were obtained with regard to the sale of the Charged Machinery. The Official Liquidator points out that all previous attempts to sell the machinery by the secured creditor and by the Official Liquidator were unsuccessful.

6. After taking note of the above contentions, at the outset, it should be noticed that IREDA is the secured creditor as regards the Charged Machinery, which is, obviously, not an unencumbered asset of the company in liquidation. As the secured creditor, IREDA, opted to enforce the charge instead of relinquishing the same to participate in the winding up as an ordinary creditor. Until the Companies Act, 1956 was amended by Act 35 of

1985, a secured creditor could stand outside the winding up and enforce the charge without the permission of the Companies Court. The change introduced by Act 35 of 1985 is to create a statutory *pari passu* charge in favour of the workmen to the extent of the workmen's portion in each secured asset, if enforced by the secured creditor. Such amendment also provides that the Official Liquidator is entitled to represent the workmen for purposes of enforcing the *pari passu* charge. Since the Official Liquidator functions under the supervision of the Companies Court, the Companies Court is involved in the process primarily but not exclusively to enforce the *pari passu* charge. The sale would ordinarily be undertaken by the secured creditor although it could be done by the Official Liquidator, with the consent of the secured creditor, on application to the Companies Court. By contrast, in respect of unencumbered assets, the sale is undertaken at the instance of the Official Liquidator under orders of the Companies Court. Rules 272 and 273 of the Companies (Court) Rules would apply in the latter case but not to a sale by the secured creditor with the permission of the Companies Court. In this case, the secured creditor, namely, the second respondent had taken a decision to sell the Charged Machinery (the secured assets) to the fourth respondent after taking into consideration all the attendant circumstances, including the inability to sell the secured assets for more than a decade. By placing the valuation report in such regard before the Court, the secured creditor took permission to sell the asset for a price of Rs.7,10,00,000/-. The applicant asserts that he is ready and willing to purchase the same asset for Rs.7,60,00,000/-. However, no evidence has been placed on record with regard to the financial capability of the applicant, such as a bank statement showing the credit balance or fixed deposit receipts or the like. Meanwhile, pursuant to the permission granted to the second respondent to sell the assets to the fourth respondent, the fourth respondent has tendered the entire sale consideration.

7. The order dated 29.03.2022 directed the fourth respondent to pay a sum of Rs.5,09,38,877/- (from and out of the sale consideration) to the Official Liquidator to safeguard the workmen's portion in the secured asset. Since the dues from the company in liquidation to IREDA are much higher than the value of the Charged Machinery, apart from the workmen, no other stakeholder of the company in liquidation would be entitled to a share from the sale proceeds. From the report of the Official Liquidator, it is evident that the fourth respondent remitted a sum of Rs.5,09,38,877/- to the Official

Liquidator in compliance with the above order, and the said sum is presently in the accounts of the Official Liquidator. Although the Court is fully empowered to interfere with a sale process if such process is tainted by fraud or irregularity or for any other sufficient reason, the grounds canvassed by the applicant do not satisfy the requirements in such regard.

8. For reasons set out above, C.A.No.116 of 2022 is dismissed without any order as to costs.

9. A similar application has been presented by another scrap dealer. In the said application (C.A.No.127 of 2022), an offer is made to purchase the machinery at Rs.8,40,00,000/- without any evidence of the financial capability of the applicant. For reasons set out above in respect of C.A.No.116 of 2022, C.A.No.127 of 2022 is also dismissed.

16.06.2022

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SENTHILKUMAR RAMAMOORTHY, J

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