Comp.A.Nos.519 & 521 of 2023
in
C.P.No.115 of 2004

KRISHNAN RAMASAMY, J.

The application in Comp.A.No.519 of 2023 has been filed to direct the 2nd respondent/Commercial Tax Department to take steps to remove the attachment entry No.15/2008 dated 19.03.2008 found in encumbrance certificate with respect to Lot C properties.

2. The application in Comp.A.No.521 of 2023 has been filed to direct the Official Liquidator/1st respondent to effect changes in the extent mentioned in S.No.244/1 and S.No.245/1 in the list of Valuation report in respect of Lot-C properties as per patta.

3. The learned counsel for the applicant would submit that the applicant-Company had participated in the public auction conducted by the 1st respondent/Official Liquidator for Lot-C/subject property, wherein they are

declared as successful bidder. They quoted a sum of Rs.5,23,00,000/- for the purchase of the Lot-C and out of the said amount, so far, they have remitted a sum of Rs.1,02,00,000/- including EMD.

4. Further, he would submit that in the Encumbrance Certificate of the subject property, there is an entry with regard to the Statutory charge created by the 2nd respondent/Commercial Tax Department for the due amount payable by the Company in Liquidation. Hence, he would contend that unless the encumbrance is removed, the applicant will be handicapped to pay the balance amount towards the sale consideration of the subject property.

5. He would also contend that in the sale notice, it was stated that the property will be sold in *"as and where condition"* and without any encumbrance or charges. Therefore, he requests this Court to issue any appropriate direction to remove the entries, with regard to the Statutory charge created by the 2nd respondent, from the records of Sub-Registrar Office.

6. In reply, the Official Liquidator would submit that in the present case, the possession of the properties was taken over by her and after valuation, the said property was sold through public auction with the permission of this Court.

7. With regard to the charge created by the 2nd respondent, she would submit that once the 2nd respondent has taken a stand and filed their claim before the learned Official Liquidator, they are inside the process of winding up of the company and in such case, the possession of the subject property will be taken over by the learned Official Liquidator and thereafter, it will be sold through public auction. Therefore, the 2nd respondent would be considered as a secured creditor as a 1st charge holder or 2nd charge holder based on the mortgage status of the subject property and accordingly, after the payment of amount towards the workmen dues and the claims made by the 1st charge holders and the 2nd charge holders will be considered.

8. The learned Additional Advocate General appearing for the 2nd respondent/Commercial Tax Department would fairly submit that though the charge was created by the 2nd respondent, they had also filed their claim before the learned Official Liquidator. In such case, the Official Liquidator has to take over the possession of subject property and distribute the sale proceedings of the said property to the secured creditors based on the priority provided under Section 529A and 530 of the Companies Act, 1956.

9. Hence, he requests this Court to issue appropriate directions to the 1st respondent to adjudicate the claim filed by the 2nd respondent and distribute the due amount, out of the realisation made from the sale of subject property. He would also submit that upon such distribution, the entries with regard to the creation of Statutory charge will be removed.

10. I have given due consideration to the submissions made by the learned counsel for the applicant, the Official Liquidator and the learned Additional AdvocateGeneral appearing for the 2nd respondent/Commercial Tax Department and also perused the materials available on record.

11. In the present case, there is no doubt with regard to the fact that a Statutory charge was created by the 2nd respondent against the dues of the Company and subsequently, the said Company went into liquidation. Thereafter, the assets of the said Company were taken over by the learned Official Liquidator and accordingly, the subject property was sold to the applicant, who was the successful bidder in the public auction conducted by the learned Official Liquidator.

12. Thereafter, the applicant came to know that there was an entry in the records of the Sub-Registrar Office against the subject property with regard to the creation of the Statutory charge created by the 2nd respondent. As far as this aspect is concerned, this Court is of the view that once the property

was taken over by the learned Official Liquidator and sold through public auction without any encumbrance, certainly, they have to remove the entries from the records of the Sub-Registrar Office.

13. Further, it was admitted by all the parties that the 2nd respondent has already filed their claim before the learned Official Liquidator, whereby, they had participated in the winding up process of the Company in liquidation. Therefore, they cannot stood outside the winding up proceedings.

14. That apart, it was submitted by the learned Additional Advocate General appearing for the 2nd respondent that out of the amount realized from the sale of properties, after deduction towards workmen dues and the 1st charge holders' claim (if the subject property was mortgaged with any other banks before the creation of statutory charge), the claim made by the 2nd respondent has to be considered by the learned Official Liquidator.

15. In view of the above, since now the property was sold through

public auction with the permission of this Court, by mentioning that there was no encumbrance, it has to be handed over to the buyer without any encumbrance. Hence, it is necessary to protect the interest of the buyers by issuing appropriate direction to the Sub-Registrar Office to remove the entries with regard to the creation of Statutory Charge by the 2nd respondent from the records.

16. Therefore, the Sub-Registrar Office, Palani, is directed to remove the Statutory charge created by the 2nd respondent dated 19.03.2007 within a period of 2 weeks from the date of production of a copy of this order by the parties.

17. At this juncture it was brought to the knowledge of this Court that out of a sum of Rs.5,23,00,000/-, only a sum of Rs.1,02,00,000/- was paid by the applicant towards the sale proceeds of the subject property. Hence, the applicant is directed to pay the balance amount of a sum of Rs.4,21,00,000/- through Demand Draft on or before 08.08.2024, failing which, the entire

amount already paid will be forfeited.

18. Upon payment of the said amount, the learned Official Liquidator is directed to consider the representation of the applicant and make suitable correction in the variation of extent in respective survey numbers as requested by the applicant in Comp.A.No.521 of 2023.

19. As far as the other properties are concerned, it is for the learned Official Liquidator to bring the same for sale through public auction, in which, the applicant can participate.

20. In the result, these applications are allowed.

26.07.2024

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Note: *Issue order copy on 01.08.2024*

KRISHNAN RAMASAMY, J.

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26.07.2024
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