

Lica (P.) Ltd. (No. 1) vs Official Liquidator And Anr. on 4 January, 1993

Equivalent citations: [1996]85COMPCAS788(SC), AIRONLINE 1993 SC 366, (1995) 4 COMLJ 494 (1996) 85 COMCAS 788, (1996) 85 COMCAS 788

Author: K. Ramaswamy

Bench: K. Ramaswamy, N.P. Singh

JUDGMENT

K. Ramaswamy, J.

1. Special leave granted.

2. In the winding up proceedings of India Electric Works Ltd. one of its assets, namely, an open land situated in Delhi, was offered for sale by sealed tenders. The appellant and Mr. Shantilal Malik, 22, Defence Colony Market, New Delhi, and others submitted their tenders. At an open auction held on July 31, 1992, from an offer of Rs. 2,00,000, Mr. Malik became the highest bidder of Rs. 37,00,000. He was directed to deposit 25 per cent. of the bid amount within two weeks and the remainder within 60 days.

3. The learned company judge, Calcutta High Court, posted the case to August 14, 1992, for further action. On August 14, 1992, the appellant offered a sum of Rs. 38,00,000. The company judge after consideration allowed the petition of the appellant and directed it to deposit 10 per cent, of the bid by August 1992, and the balance 15 per cent, to make up 25 per cent., by August 24, 1992 and adjourned the case to September 1, 1992. Shantilal Malik, the second respondent, also was given an opportunity to increase his offer feeling aggrieved against this order Shantilal Malik filed an appeal before the Division Bench. The Division Bench by the impugned judgment dated September 15, 1992, set aside the order of the company judge and directed her to confirm the sale to Shantilal Malik at Rs. 37,00,000 as against which the present appeal has been filed. When the appellant offered Rs. 45,00,000 by order dated October 29, 1992, this court directed the appellant to deposit the said sum of Rs. 45,00,000 after taking into account the sum already deposited in the company court within a period of three weeks from that date. Pursuant thereto the appellant deposited the amount.

4. The Division Bench set aside the order on the ground that "after acceptance of the offer by the company judge, the sale should have been treated as closed and should not have been proper for the

court to consider any other offer under, subsequent date even if such subsequent offer is higher. The earlier offer already accepted by the court could not be rejected upon some higher offer made later on ; if this course is accepted then there will be no finality in any matter and in such event every now and then the offer already accepted may be upset by rejecting in view of some higher offer". . . "If an offer is accepted then such offer cannot be later on rejected unless there are some strong grounds, namely, that the price offered is inadequate of that some action of fraud is involved. In the present case before us, none of such elements was there before the trial court calling for rejection". Admittedly, the sale is subject to acceptance by the court and as per condition No. 11 even a confirmed sale is liable to be set aside.

5. In *Navalkha and Sons v. Ramunuju Das* [1970] 40 Comp Cas 936 (SC) : [1970] 2 Comp LJ 8, this court held that the court is the custodian of the interests of the company and its creditors and the sanction of the court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the company and its creditors as well. Where the acceptance of the offer by the Commissioner is subject to confirmation of the court, the offer does not by mere acceptance get any vested right in the property so that he may take automatic confirmation of this offer. The condition of confirmation by the court operates as safeguard against the property being sold at an inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the court to satisfy itself that having regard to the market value of the property the price offered is reasonable, unless the court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In that case, the court upheld the order of the company court reopening the concluded sale and reaction was upheld. In *Kayjay INDUSTRIES (P.) Ltd. v. Asnew Drums (P.) Ltd.* , in a court sale under Order 21, Rule 90 when it was set aside, this court held that a court sale is a forced sale and, notwithstanding. The competitive element of a public auction, the best price is not often forthcoming. The judge must make a certain margin for this factor. A valuer's report, good as a basis, is not as good as an actual offer and variation within the limits between such an estimate, however careful, and real bids by seasoned businessman before the auctioneer are quite on the cards. The businessman makes uncanny calculations before striking a bargain and that circumstance must enter the judicial verdict before deciding whether a better price could be had by a postponement of the sale. In *Radhy Shyam v. Shyam Behari Singh* , this court considering the scope of Order 21, Rule 90 of the Civil Procedure Code, 1908, held that in order to set aside an auction sale what has to be established is that there was not only inadequacy of the price but that inadequacy was caused by reason of the material irregularity or fraud.

6. The purpose of an open auction is to get the most remunerative price and it is the duty of the court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value. If that path is cut down or closed the possibility of fraud or to secure inadequate price or underbidding would loom large. The court would, therefore, have to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case. One of the terms of the offer in this case is that even confirmation of the sale is liable to be set aside by the High Court as per Clause 11 of the conditions of offer. The sale conducted was subject to confirmation. Therefore, mere acceptance of the offer of Mr. Shantilal Malik does not constitute any finality of the auction nor would it be automatically confirmed. The appellant offered a higher price

even now at Rs. 45,00,000. Keeping in view the interest of the company and the creditors and the workmen to whom the sale proceeds would be applied, the learned company judge was right in exercising her discretion to reopen the auction and directing Mr. Shantilal Malik as well to make a higher offer than what was offered by the appellant. In every case it is not necessary that there should be fraud in conducting the sale, though on its proof the sale gets vitiated and it is one of the grounds to set aside the auction sale. Therefore, the discretion exercised by the learned single judge cannot be said to be unwarranted. Under the circumstances, we are satisfied that the Division Bench of the Calcutta High Court-committed manifest illegality in interfering with the order of the learned single judge. The appeal is allowed. The order of the Division Bench is set aside. The clear action of the learned single judge are also expunged. The offer of the appellant of Rs. 45,00,000 shall be minimal. It is open to the second respondent Shantilal Malik to participate in the auction and the learned single judge is directed to conduct the auction in the open court between the parties and the highest offer may be accepted as per law and action be taken thereof as per law. The appeal is accordingly allowed but in the circumstances parties are directed to bear their own costs.

1. Leave granted.

2. In winding up proceedings of India Electric Works Ltd., the learned company judge, Calcutta High Court, brought one of its assets, Plot No. 13A, Block 4, Asaf Ali Road, New Delhi, to sale. The learned company judge rejected the offers made in the tenders and in the open auction it fetched Rs. 45 lakhs. Ultimately when the matter was brought to this court, by our order dated April 4, 1993, we allowed the appeal and directed to sell the plot by open auction between the appellant and Satpal Malik, the second respondent and we fixed the upset price at Rs. 45 lakhs. In the second auction the appellant became the highest bidder for Rs. 1.10 crores. On appeal by the respondent, the Division Bench, while upholding the auction directed the learned company judge to reconsider the matter and to conduct auction afresh. Against the order dated May 26, 1993, this appeal by special leave has been filed.

3. Sri G. Ramaswamy, learned senior counsel for the appellant contended that as per the directions of this court and the conditions imposed by the learned company judge, the appellant had deposited Rs. 1.10 crores on the same day and in terms thereof the appellant had already obtained a registered deed of conveyance. Therefore, the Division Bench was not justified in law to reopen the concluded sale validly made.

4. He further contended that if the auctions are unsettled by repeated court order and re-auction is conducted, prospective bidders would not come forward to participate in the competitive bid and it creates an impression among the genuine bidders that the court sale will be uncertain and litigious, and would not be attractive and would fetch low price. Inherently there would be much difference between free sale and court sale prices.

5. So the court should be slow to interfere with the court sale unless it is vitiated by fraud or material irregularity in conducting the sale. That is not the case of the respondent. Sri Soli Sorabji, learned senior counsel for Mr. Malik refuted the contentions.

6. The respondent has filed a counter-affidavit in this court in which he offered to pay a sum of Rs. 1.25 crores and demand drafts are also produced today in the court in this behalf to make up the deficiency. This court while disposing of the matter on January 4, 1993, has, inter alia, stated thus (at p. 791 supra) :

The purpose of an open auction is to get the most remunerative price and it is the duty of the court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value. If that path is cut down or closed the possibility of fraud or to secure inadequate price or under-bidding would loom large. The court would, therefore, have to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case the steps for conducting the sale would be moulded.

Proper control of the proceedings and meaningful intervention by the court would prevent the formation of a syndicate, underbidding and the resultant sale of property for an inadequate price. The order passed by this court yielded the result that the property which would have been finalised at Rs. 45 lakhs, fetched Rs. 1.10 crores and in this court a further offer of Rs. 1.25 crores is made. In other words, the property under sale is capable of fetching a higher market price. Under these circumstances, though there is some force in the contention of Sri Ramaswamy that the court auction may not normally be repeatedly disturbed, since this court, on the earlier occasion, had limited the auction between the two bidders, the impediment will not stand in the way to direct sale afresh. Even today the parties are prepared to participate in the bid. Accordingly, we fix the upset price at Rs. 1.50 crores. It is slated that Mr. S. L. Malik had already deposited a sum of Rs. 45 lakhs. Bank drafts for a sum Rs. 80 lakhs are produced before us today. Therefore, we direct that the bank drafts should be deposited in the office of the learned company judge on or before September 27, 1993, and the balance amount, of Rs. 25 lakhs shall be deposited on or before October 11, 1993, making up the total sum of Rs. 1.50 crores. The learned single judge is requested to conduct the auction afresh between the parties immediately after the reopening after the pooja holidays fixing the upset price at Rs. 1.50 crores. The highest bidder should deposit the balance amount on the same day before the working hours. are closed. On deposit so made the court would confirm the sale. No appeal thereon shall be entertained on any ground whatsoever.

7. The terms and conditions set out by the learned company judge, were published before publishing for sale. Conditions Nos. 9 and 11 read thus :

9. The sale would be subject to such modification/alteration of terms and conditions of sale as the hon'ble court deem fit and proper and the decision of the High Court shall be final.

11. The High Court may set aside the sale in favour of the purchaser/purchasers even after the sale is confirmed and the purchase consideration is paid on such terms and

conditions as the court may deem fit and proper for the interest and benefit of creditors, contributors and all concerned and/or for public interest.

8. When the matter was carried in appeal, the Division Bench passed the order on May 5, 1993, to the following effect.

If any conveyance is executed, that will also abide by the result of the appeal.

9. It is stated that the appellant got the sale deed executed and registered on May 25, 1995. The Division Bench upset the order of the learned single judge with the above direction on May 26, 1995. Therefore, the execution and registration of the sale deed are subject to the result in the appeal. Keeping the facts and circumstances of this case in view, we set aside the sale with the aforesaid directions. The deposit of rupees one crore and ten lakhs made by the appellant would remain in deposit. He need not make any further deposit to make up the upset price. In the event of his becoming the highest bidder, he shall deposit the balance amount on the same day as directed above.

10. Sri Ramaswamy stated that Rs. 1.10 crores is lying idle without earning interest. If the amount was not already deposited in any interest earning deposit or securities, the learned company judge or the official liquidator is free to deposit the amount, till the auction is finalised. In the event of the appellant not becoming the highest bidder, the equities in, respect of his deposit regarding interest may be worked out and adjusted by the learned company judge.

11. The appeal is disposed of accordingly, but in the circumstances of the case, the parties are directed to bear their own costs in this court.