

CASE NO.:
Appeal (civil) 3490 of 2006

PETITIONER:
Punjab Wireless Systems Employees Union

RESPONDENT:
WINSOME Yarns Ltd. & Ors.

DATE OF JUDGMENT: 08/08/2006

BENCH:
H K Sema & R V Raveendran

JUDGMENT:
JUDGMENT

O R D E R
(Arising out of SLP) Nos.24032-33/2005)
With
(CA Nos 3491 / 2006 @ SLP) Nos.24547-48/2005)

Leave granted.

These appeals arise from the order dated 6.10.2005 of the Punjab & Haryana High Court in Company Appeal No. 11/2005.

2. Punjab Wireless Systems Employees Union (the appellant in the first batch and 11th Respondent in the second batch, and for short "Employees' Union") claims to be a Union representing the employees of the Punjab Wireless Systems Ltd. which is in liquidation (second respondent in both batches of appeals, for short the 'company' or 'PUNWIRE'). M/s. Winsome Yarns Ltd. (first respondent in both batches, for short 'WINSOME') is the purchaser of Items 17, 19 and 20 from out of the assets of PUNWIRE under sale notice dated 15.6.2004 issued by the official liquidator. Respondents 3 to 10 are the banks/financial institutions which are the creditors of PUNWIRE. M/s. Sungroup Enterprises Pvt. Ltd. (Respondent No. 11 in the first batch and Appellant in the second batch, for short 'SUNGROUP') is a company interested in purchasing Item Nos.17, 19 and 20.

3. M/s Punjab Wireless systems Ltd was ordered to be wound up on 1.2.2001. On 4.1.2003, the learned Company Judge permitted the official liquidator to sell the assets of PUNWIRE. A Sale Committee was constituted (consisting of the Official Liquidator and two of the major creditors, namely, Canara Bank and IFCI), to work out the modalities of sale. The Sale Committee divided the assets of PUNWIRE to be sold into 25 separate lots, for convenient sale. The official liquidator issued a sale notification dated 15.6.2004 inviting sealed tenders. The sale notice was widely published on 25.6.2004 in leading newspapers that is Economic Times, Times of India, The Tribune (all India editions), Punjab Kesari (Ambala, Delhi & Jalandhar editions \026 Hindi) and Jagbani (Jalandhar edition \026 Punjabi). Items 17, 19 and 20 with which we are concerned in these appeals, and their reserve price as per the sale notice dated 15.6.2004 were as under :

i) Item 17 : Industrial Plot bearing No.B-77, Phase VII, Industrial Area, Mohali (near Chandigarh), Punjab, measuring 14,550 sq.yds. with the structures thereon (reserve price Rs.3 crores)

ii) Item 19 : Furniture in item no. 17 (reserve price Rs.4 lakhs)

iii) Item 20 : Air-conditioners and generator sets in item no. 17 (reserve price Rs.15 lakhs).

The sale notice reserved the power to reject any offer or to allow inter se bidding in the official liquidator and the Sale Committee. It also made it clear that sale will be subject to confirmation by the learned Company Judge.

4. WINSOME gave its offers in regard to three items, that is Rs.3.14 crores for Item No.17, Rs.4.5 lakhs for Item No.19 and Rs.15.5 lakhs for Item No.20. At its meeting held on 27.7.2004, the Sale Committee decided to retain the offer of WINSOME in regard to item no. 17 until the machinery, furniture and fittings (Items 18, 19, 20) kept in the premises were disposed of. At its further meeting held on 28.7.2004, the Sale Committee resolved to invite WINSOME to buy Item Nos.17, 18, 19 and 20, (that is, the three items for which it had made offers as also Item No.18 (- machineries installed in Item No.17) at a total price of Rs.5 crores, the price being subject to negotiations, if WINSOME so desired. WINSOME did not agree. On 10.12.2004 there was an inter se bidding among WINSOME and two other tenderers, namely, M/s. Star Point Financial Services Ltd. and M/s. S.K. Khaitan Pvt. Ltd., WINSOME increased the offer in respect of Item No. 17 to Rs. 3.16 crores. There was no increase in its offer for items 19 and 20. The learned Company Judge, by his order dated 10.12.2004, accepted the offer of WINSOME at Rs.3.36 crores for Items 17, 19 and 20 and confirmed the sale of these items in favour of WINSOME. The order dated 10.12.2004 was clarified on 13.1.2005.

5. WINSOME deposited the balance of the sale price on 13.12.2004 and possession of Items 17, 19 and 20 was delivered to WINSOME on 16.12.2004. As Plot No.B-77 comprised in item No. 17 was a leasehold property taken on lease from Punjab Small Industries & Export Corporation Ltd. (PSIEC), the Official Liquidator gave a no objection certificate for transfer of the lease from the name of PUNWIRE to the name of WINSOME on 29.12.2004. In pursuance of it, WINSOME applied to PSIEC for transfer of the lease in its favour. On payment of a transfer fee of Rs.11,78,550/-, the lease in respect of plot No. B-77 was transferred to WINSOME and a lease deed dated 25.10.2005 has been executed and registered between PSIEC and WINSOME, the period of lease being 99 years from the date of allotment to the original allottee.

6. SUNGROUP filed C.A. No.72/2005 in January, 2005, offering to take over the entire assets of PUNWIRE (Items 1 to 25) as a going concern for a price of Rs.12 crores. The Company Court directed SUNGROUP to deposit a sum of Rs.2 crores with the official liquidator to establish its bona fides, as a condition for entertaining the application. SUNGROUP deposited the said sum of Rs.2 crores. On 11.2.2005, SUNGROUP raised its offer for the total assets (Items 1 to 25) to Rs.14 crores. The price offered by SUNGROUP for Items 17, 19 and 20 (out of the total price offered) was Rs. 353.2 lakhs for item No.17, Rs. 1.25 lakhs for item No.19 and Rs. 2.40 lakhs for item No.20 in all, Rs.356.85 lakhs, as against the price of Rs.336 lakhs paid by WINSOME. The Employees Union also filed objections dated 11.2.2005 to the sale in favour of WINSOME contending that they were vitally interested in the sale of the assets and that the sale in favour of WINSOME without notice to the workers, was liable to be set aside. The Employees Union was of the view that if SUNGROUP took over the entire assets of PUNWIRE as a going concern, there was a reasonable chance of PUNWIRE employees being employed.

7. The learned Company Judge by order dated 30.3.2005 allowed the application of SUNGROUP in part and set aside the confirmation of sale dated 10.12.2004 (as clarified on 13.1.2005) and directed to WINSOME to deliver back possession of Items 17, 19 and 20 to the Official Liquidator.

The Company Court held that WINSOME will be entitled to the refund of the sale price along with the interest paid by it to its bankers on the loans taken by it, on submission of a bill for interest based on actuals. The court directed that SUNGROUP should bear and pay the said interest as also the expenses relating to re-auction of Items 17, 19 and 20.

8. The said order was challenged by WINSOME, in Company Appeal No.11/2005. A Division Bench of the Punjab & Haryana High Court by order dated 6.10.2005 allowed the said appeal, set aside the order dated 30.3.2005 of the learned Company Judge and restored the order dated 10.12.2004 (as clarified on 13.1.2005) confirming the sale in favour of WINSOME. The Division Bench directed the Official Liquidator to complete all formalities in regard to the sale in favour of WINSOME and further directed the return of Rs.2 crores to SUNGROUP. The order of the Division Bench is challenged by the Employees' Union in the first batch of appeals and by SUNGROUP in the second batch of appeals.

9. SUNGROUP contends that the sale price at which Items 17, 19 and 20 were sold to WINSOME was very low. It relied on the minutes of the meeting dated 28.7.2004 of the Sale Committee to get a fair indication of the market value. It pointed out that the Sale Committee had expressed the view that the price should be Rs.5 crores for item Nos.17, 18, 19 and 20 which would mean that the market price of item no. 17 (B-77, Mohali Industrial Area, Phase-VII) was at least Rs.4.5 crores. It, therefore, contended that the price of Rs.3.16 crores realized for Item No.17 very low. SUNGROUP next submitted that the adjoining plot of equal dimension (that is Plot No.B-76 - lot No.10) was purchased by SUNGROUP on 20.4.2006 for a price of Rs.11.6 crores and that if the price for Item No.17 is worked back on that basis by deducting the annual appreciation for two years at the rate of about 15% to 20% per year, the price of item no. 17 would have been around not less than Rs.6 to 7 crores, in the year 2004. It also alleged that one of the bidders at the inter-se bidding on 10.12.2004, namely Star Point Financial Services Ltd., was a sister company of WINSOME and therefore the sale was not legal.

10. The Employees' Union adopted the contentions urged by SUNGROUP and in addition submitted that notice should have been issued by the Company Court to it before confirming the sale in favour of WINSOME as the employees were vitally interested in the outcome of the sale. The Employees' Union also submitted that large amounts were due to the employees and unless a good price was received, the employees would be adversely affected. It was further contended that learned Company Judge, being the custodian of the assets of the company under liquidation, had tried, by its order dated 30.3.2005, to ensure that the maximum price was secured for the assets and therefore the Division Bench ought not to have interfered with the said order of the Company Judge setting aside the sale in favour of WINSOME. It also submitted that if SUNGROUP is permitted to take Item No.17 at Rs.11.6 crores, the price at which SUNGROUP had purchased the adjoining property (Item No.10), it will benefit the workers and creditors of the Company.

11. On the other hand WINSOME contended that they had purchased Items 17, 19 and 20 at the then prevailing market price. WINSOME pointed out that in spite of wide publicity, there were no better offers and the Sale Committee at its meeting held on 27.7.2004 had proposed to accept its bid of Rs.3.14 crores. Referring to the minutes of the meeting of the Sale Committee on 28.7.2004, it was submitted that the Committee had merely suggested that WINSOME should be requested to purchase Item Nos.17 to 20, which included the machinery for which it had not made any offer, for Rs.5 crores, making it clear that it was only an asking price, open to negotiations. It is contended that the sum of Rs.5 crores referred to by the Sale Committee was not an indication of the market price of Item No. 17 as Rs.4.5 crores but only an attempt by the creditor banks to maximize the sale price receivable for Items 18 to 20. Strong reliance was also placed on the fact that SUNGROUP itself had offered only Rs.3.53 crores

for Item No. 17 in February, 2005, when it sought the setting aside of the sale in favour of WINSOME which showed that the price was only around Rs.3 crores when it made its offer in July, 2004. It is contended that as there were no irregularities in the sale, the sale could not be set aside, even if for any reason, the price paid by it is held to be marginally lower than the then prevailing market price. Insofar as the purchase of the adjoining plot by SUNGROUP on 20.4.2006 for Rs.11.6 crores, it was contended that the said sale was nearly 21 months after the sale of item no. 17 and therefore, could not be a yardstick for determining whether the sale price paid for item no. 17 was proper and reasonable, particularly as there was an enormous spurt in prices after it purchased the plot. Lastly it is contended that the sale having been confirmed and the PSIEC having executed the registered lease deed in their favour the question of interfering with the sale does not arise.

12. After the matter was argued for sometime the learned counsel for SUNGROUP submitted that having purchased the adjoining property, they were interested in purchasing Plot No.B-77 also and SUNGROUP was willing to offer the same price of Rs.11.6 crores for the property (Item No. 17). Learned counsel for the Employees' Union submitted that in the interest of workers, WINSOME should take a reasonable profit and give up the property in favour of SUNGROUP so that the workers and creditors will be benefited. At this stage, learned counsel for SUNGROUP stated that being interested in the welfare of the workers, in addition to the price of Rs.11.6 crores offered by them for Item No.17, it will also pay ex gratia, a sum of Rs.50 lakhs to the employees of PUNWIRE, as they have been without salary for quite sometime. In view of these submissions, we queried the learned counsel for WINSOME as to whether WINSOME was interested in considering the offer of SUNGROUP.

13. Learned counsel for WINSOME took time and after obtaining instructions, submitted, though with some reluctance, that WINSOME was agreeable for the proposal, provided it received a sum of Rs.6.36 crores for items 17, 19, & 20 (made up of Rs.3.36 crores towards the refund of price and Rs.3 crores towards interest, expenses and compensation for deprivation of its property. He submitted that WINSOME had taken a great risk by borrowing huge amounts from the banks for purchasing the property and that a sum of Rs.1.64 crores is due to Canara Bank and Rs.1.38 crores is due to the State Bank of Patiala (respondents 4 & 6 herein). He also submitted that subject to payment of Rs.6.36 crores, WINSOME had no objection either for transfer of its rights to SUNGROUP, or for the sale in its favour being set aside and a fresh sale being confirmed in favour of SUNGROUP.

14. There was no objection to the proposal by the other parties, obviously having regard to the fact that everyone is benefited by the said arrangement. In view of the above we consider it a fit case to exercise our power under Art. 142 of the Constitution, and accept the settlement as proposed in the larger interest of parties and to benefit the workmen. We make it clear that the sale which has already been confirmed in favour of WINSOME, is set aside, not on merits, but in pursuance of the negotiated settlement arrived at among SUNGROUP, the Employees' Union and WINSOME. Accordingly, we allow these appeals in part accepting the settlement on the following items:

i) SUNGROUP shall pay a sum of Rs.6.36 crores to WINSOME towards the refund of the sale price and as compensation for depriving WINSOME from the enduring benefit of its capital asset, in the following manner :

a) Rs. 1.64 crores by Demand Draft drawn in favour of Canara Bank, Sector 35B, Chandigarh, to the account of WINSOME, in repayment of the loan taken for purchasing item 17.

b) Rs. 1.38 crores by demand draft drawn in favour of State Bank of Patiala, Commercial Branch, SCO 103-

107, Sector 8C, Chandigarh, to the account of WINSOME, in repayment of the loan taken for purchasing item 17.

c) Rs.3.34 crores by two demand drafts for Rs.3 crores and Rs.34 lakhs respectively drawn in the name of WINSOME payable at Chandigarh.

ii) SUNGROUP shall pay a sum of Rs.5.24 crores to PUNWIRE (company in liquidation) represented by the official liquidator, towards the price of Item No.17 in the following manner :

a) Rs. 2 crores by authorizing the Official Liquidator to adjust the deposit already made by SUNGROUP.

b) Rs.3.24 crores by demand draft drawn in the name of Official Liquidator, High Court of Punjab & Haryana, to the account of company in liquidation (PUNWIRE).

iii) On payment of the amounts as aforesaid, the official liquidator shall file a report with the Company Judge confirming the receipt of Rs.8.6 crores as full sale price for Item No. 17,19 and in the following manner :

a) Rs.3.36 crores received from WINSOME and adjusted towards the sale price.

b) Rs.2 crores deposited by SUNGROUP and adjusted towards the price.

c) Rs.3.24 crores received by way of demand draft from SUNGROUP.

The price of Rs.8.6 crores so received shall be dealt with as per directions of the learned Company Judge.

iv) PUNWIRE, the company under liquidation shall be entitled to retain any interest accrued on Rs.3.36 crores and Rs.2 crores till date, without being liable to refund or account for the same either to WINSOME or to SUNGROUP.

v) On receipt of the payments as aforesaid by WINSOME and the Official Liquidator, the sale in favour of WINSOME in respect of items 17, 19, 20 shall stand set aside and sale of said item No.17(Plot No. B.77 and structures thereon) shall stand confirmed in favour of SUNGROUP. The Official Liquidator shall issue a fresh NOC to enable SUNGROUP to obtain transfer of lease from PSIEC in respect of Plot No. B-77.

vi) On receipt of the demand drafts aggregating to Rs.6.36 crores as detailed in para (i) above, WINSOME shall

a) issue a letter of request for cancellation of the existing lease deed in its favour so as to enable SUNGROUP to secure a fresh lease deed in its favour by PSIEC. (The cost of execution of fresh documents in that behalf shall be borne by SUNGROUP);

b) deliver possession of item 17 to SUNGROUP in the presence of the official liquidator on "as is where is" basis;

c) deliver possession of Items 19 and 20 to Official Liquidator;

d) do all acts as may be reasonably required by SUNGROUP and at the cost of SUNGROUP, to ensure

Item 17 is transferred to SUNGROUP.

vii) SUNGROUP shall make all the payments within one week from today. The Official Liquidator and WINSOME shall issue necessary NOCs./request letters within one week thereafter.

viii) SUNGROUP shall pay ex gratia a sum of Rs.50 lakhs to the Employees' Union, by a demand draft made out in the name of the Union, for equal distribution to the employees who were in the employ of PUNWIRE during June, 1999 (when employees were last paid salaries by the company). In respect of any employees who died subsequently, their LR's. shall be paid the employee's share. The entire distribution shall be done by the Employees Union independent of these proceedings.

ix) SUNGROUP will have the option to purchase Items 19 and 20 separately by paying the price of Rs.4.50 lakhs and Rs.15.50 lakhs respectively to the Official Liquidator to the account of PUNWIRE.

x) On the sale of Item No.17 being set aside and leasehold in respect of Plot No.B-77, being transferred in favour of SUNGROUP, it is open to WINSOME to seek refund of the transfer fee in regard to lease in its favour from PSIEC or stamp duty from the State Government, if permissible, as per law.

The order of status quo granted on 5.12.2005 shall continue to be in force till the transaction is completed, as aforesaid. Liberty is reserved to seek clarifications, if necessary.