

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.6061-6063 OF 2008
(Arising out of SLP(C) Nos.15617-15619 of 2007)

M/S PRESTIGE GARDEN ESTATES PVT.LTD.

...APPELLANT (S)

VERSUS

STATE OF KARNATAKA & ORS.

...RESPONDENT(S)

ORDER

Leave granted.

On 2nd August, 2002 BIFR recommended winding up of a Company known as NGEF to the High Court. On receiving that recommendation the High Court registered Company Petition No. 154 of 2002 for the purpose of winding up. On 3rd August, 2004, order of winding up came to be passed. Thereafter, the High Court approved the terms and conditions for sale of the assets of the Company by public auction.

On 3rd November, 2005 Official Liquidator (OL) published a Public Notice inviting offers. In the meantime, two Company Applications were moved by the State of Karnataka (majority share holders) seeking stay on sale of assets by public auction. They suggested a revival scheme. They also sought permission for sale of land to KSRTC, BMRC and BMTC by relocating the Company's factory elsewhere. This suggestion was made as part of revival of

the Company. In the meantime, during the interregnum the Official Liquidator vetted the bids received for purchasing the assets of the Company pursuant to the directions of the High Court.

On 14th December, 2005, pending the revival scheme, the Company Court passed an order on the report of the Official Liquidator stating that the bids can be processed subject to the decision on the confirmation of the bids for purchase of assets of the Company. On the same day, Company Applications moved by the State of Karnataka were taken up and the sale proceedings were kept in abeyance. Opportunity was given to State of Karnataka to place the revival scheme before the Court. Pending consideration of the said scheme the sale was kept in abeyance. On 22nd December, 2005 the High Court passed Orders on two applications made by the State of Karnataka cancelling the sale by auction in order to consider the revival scheme. It may be mentioned that M/s Prestige Garden Estates Pvt. Ltd., the appellant herein, was the highest bidder for the assets of the Company. In the meantime, M/s Prestige Garden Estates Pvt. Ltd. challenged the order of the Karnataka High Court putting the sale proceedings in abeyance pending consideration of the revival of the scheme. That appeal was, however, withdrawn with liberty to seek impleadment in the pending Company Application. Thereafter the appellant filed the Company Applications which were all dismissed by the Company Court by an Order dated September 13, 2006, inter alia, on the ground that the appellant - M/s Prestige Garden Estates Pvt. Ltd. had

-3-

failed to establish the legal right to file such application. At this stage, it may be mentioned that M/s Prestige Garden Estates Pvt. Ltd. also sought confirmation of sale by auction on the ground that they were the highest bidder who had offered the price of Rs.1,599/- crores for total area of land of 143.488 acres as on November, 2005.

On 21st November, 2006 two Company Applications were moved by State of Karnataka seeking permission to file the revival scheme under Section 391 of the Companies Act. They also prayed for stay of winding up proceedings. By the impugned judgment dated March 30, 2007, the Division Bench of the High Court held that since the Company Judge was not satisfied about the feasibility of a revival plan, as no revival plan was placed before him and since the sale proceedings were not alleged to be irregular or invalid, the order of cancellation of sale notification and termination of proceedings under Order dated 22nd December, 2005 was not correct. On the question of locus, the Court observed that summary termination of sale proceedings were arbitrary. On the question of acceptance of the bid of M/s Prestige Garden Estates Pvt. Ltd. and its confirmation the Court, however, held that due to efflux of time the same did not merit consideration and since the bids were not accepted by the Company Court, it was always open to call for fresh bids on the footing that there is a wide variance with the current market price in

-4-

comparison to the price offered in the auction held in November, 2005. Aggrieved by the said decision this Court is moved by way of Civil Appeal

During the pendency of the Special Leave Petitions we directed, vide Order dated 15.4.2008 the Central Government, to hear and decide the draft revival scheme submitted by the State of Karnataka.

We quote hereinbelow our Order dated 18th February, 2008 as also our Order dated 15th April, 2008 in extenso:

Order dated 18th February, 2008:

“In this matter, the Government of India has called upon the State

Government to appear before it with regard to the proposed draft scheme submitted by the State. We direct the Government of India to hear and decide the matter in accordance with law within six weeks. Union of India is directed to file its status report containing its decision. The question whether Government of India should hear all other stake holders or not may also be considered by the Government.

In this matter, we seek assistance of Mr. Gopal Subramaniam, learned Additional Solicitor General, as Amicus as the matter is of utmost public importance in which large stakes are involved.

Stand over for eight weeks.”

Order dated 15th April, 2008:

“.....
.....

As can be seen from the above quoted order, we

-5-

had directed Government of India to hear and decide the matter regarding the draft scheme submitted by the State of Karnataka within six weeks. It appears that the Central Government has vide Order dated 31st March, 2008 has taken the view that the scheme has to come only through Official Liquidator and not through the State, particularly in view of the winding up of the Company.

Since this Court has decided to monitor, we are directing the Central Government to hear and decide the proposed draft scheme submitted by the State of Karnataka within six weeks from today in accordance with our earlier Order dated 18.2.2008. The Central Government is directed to submit compliance report in that regard within the time bound programme.

List the matter after six weeks on Monday.”

Ultimately the scheme of revival stood rejected by Government of India vide its Order dated 20th June, 2008.

The short point involved in this case, as it stands today is, whether the property needs to be notified once again for public auction? In our view, the highest bid which came to be made in November, 2005, was of course, made by M/s Prestige Garden Estates Pvt. Ltd. which offered an amount of Rs.1,599 crores for the total area of 143.488 acres. However, since then an area of 23.736 acres (approximately) is being acquired for the benefit of public purpose out of 143.488 acres leaving a balance of 119.752 acres (approximately).

-6-

In the matter of valuation the basic norm which the Court has to look for is the best realizable price. In the present case, as narrated hereinabove, before the sale confirmation, the State of Karnataka suggested the revival scheme. That revival scheme came to be rejected on the ground that in the guise of revival the Company assets of the Company (in liquidation) were sought to be disposed of. As stated above, the revival scheme stood rejected on 20th June, 2008. In the meantime, what is being pointed out by the learned Amicus Curiae to the Court is, that between November, 2005 and 31st March, 2008 prices of lands in Bangalore have escalated. On the other hand, it is being argued on behalf of M/s Prestige Garden Estates Pvt. Ltd. that since they were the highest bidders who had offered the price of Rs.1,599 crores in November, 2005 for an area of 143.488 acres even if auction has to be held once again, the first offer should be given to the appellant herein. We find no merits in this argument for two reasons. Firstly, there was no sale confirmation in favour of M/s Prestige Garden Estates Pvt. Ltd. Secondly, for reasons for which M/s Prestige Garden Estates Pvt. Ltd. cannot be faulted, time was consumed on account of the revival scheme being submitted

by the State of Karnataka. It is that scheme which is indeed not accepted by Government of India but in the process almost three years have gone by and, in our view, since the land to be auctioned is a valuable asset of the Company in liquidation, the best possible realizable price is the only bench mark which needs

-7-

to be looked into and accordingly we are of the view that the Official Liquidator will submit his report to the Company Court after scrutinizing valuation made by the two valuers, namely,

Ms. Farhein Shah, Cushman & Wakefield India Pvt. Ltd., B-6/5, Safdarjung Enclave, New Delhi-110 029, and ITCOT Consultancy and Services Ltd. On receipt of the Report of the Official Liquidator in the sealed cover, the Company Court will fix the reserve price which shall remain in a sealed cover. The Company Court will also approve the terms and conditions of public auction and according to such approval, the Official Liquidator will issue public notice in the prominent newspapers in English, Kannada and Hindi. After receiving offers from various bidders, the Official Liquidator will compare those offers with the reserved bid. Those offers which fall below the reserved bid shall be rejected. Those offers which fall above the reserved bid shall be evaluated by the Official Liquidator who will then submit his report to the Company Court and the Company Court will accordingly decide the name of the highest bidder. These are the basic steps which are required to be taken in this case so that the best realizable value could be achieved. We may clarify once again that best available realizable value will be the basis of the valuation as on 31.3.2008.

Since, M/s Prestige Garden Estates Pvt. Ltd. had deposited an amount of Rs.186 crores with the Official Liquidator in November, 2005, the Official Liquidator shall return the said

amount to the appellant - M/s Prestige Garden Estates Pvt. Ltd. together with interest, if any. In this connection, we are informed by the Official Liquidator that he had deposited the said amount with a Nationalized Bank. It is not clear as to whether the amount was put in saving account or in F.D.R. Be that as it may, interest accumulated on the said amount of Rs.186 crores, if any, shall also be refunded to M/s Prestige Garden Estates Pvt. Ltd. within a period of four weeks.

Before us, learned counsel appearing for the State of Karnataka states, on behalf of the State Government, that the subject land would be put to auction.

We appreciate the valuable assistance rendered to this Court by Shri Gopal Subramaniam, learned Additional Solicitor General as Amicus.

The appeals are disposed of accordingly.

.....J.
[S.H. KAPADIA]

New Delhi,
September 25, 2008

.....J
[B. SUDERSHAN REDDY]