

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION NOS. 34782-34783 OF 2012

MANOJ I NAIK & ASSOCIATES

Petitioner(s)

VERSUS

OFFICIAL LIQUIDATOR

Respondent(s)

J U D G M E N T**DIPAK MISRA, J.**

The factual exposition that is capable of being encapsulated in a real small compass, has, with some passage of time and turn of events, grown into a colossal structure having the effect potentiality to amaze and perplex any prudent man. The chronology of events pyramids a gradual financial structure, making it limpid how on certain occasions properties are sold for a song in so called sales made in the proceedings under the provisions of the Companies Act, 1956 (for brevity 'the

Act') and how with some intervention the said competitors metamorphose themselves into different incarnations, and the roses on the table turn into pearls and diamonds in the private closets. To put it succinctly, the price fixed at Rs.6.25 crores for 291 plots has fetched, by the intervention of this Court, Rs.70 crores for 113 plots. It is not change of heart, but the price reality that gets manifest. Not for nothing it has been said, "money can solve the problems concerned with money". The large amount of money, we are inclined to think, would solve the problems of the company in question.

2. The short narration. A company, namely, M/s Vitta Mazda Ltd. went into liquidation and on 21.02.2002, the High Court of Gujarat directed the Official Liquidator to put up the properties of the company in liquidation (except those for which applications are pending before the said Court for regularisation of transactions) to auction for sale. Thereafter many an order was passed. On 18.12.2004, the learned Company Judge, by taking into consideration many aspects, declined to accept the report of the Official Liquidator for acceptance of the offer

made before the sale Committee. An appeal was preferred being O.J. Appeal No. 81 of 2004, wherein the Division Bench of the High Court on 30.08.2011 passed the following order:

“1. The present appeal arises against the order dated 18.12.2004 passed by the learned Company Judge in OLR No. 100 of 2003, whereby the learned Company Judge has not accepted the report of the OL for acceptance of the offer made before the Sale Committee.

3. It is an admitted position that the appellant was one of the offerers, who submitted the highest offer before the Sale Committee and when the report was made by the OL for approving the offer accepted by the Sale Committee subject to approval of the company Court, the learned Company Judge found that it would not be a case for acceptance of the offer and, therefore, rejected the report submitted by the OL.

5. Apart from the above, even if the matter is to be considered for the test of exercise of the judicial discretion exercised by the learned Company Judge, it appears that the learned Company Judge, at paragraph 5, recorded that the valuation made by the Bank of Baroda of the property is much more than the offer submitted by the appellant. If the said aspect is further considered, it appears that the offer of the appellant was Rs. 1.03 crore, whereas it is a part of the record of the Sale Committee's proceedings that as per Bank of Baroda, the valuation of the property was Rs. 6.25 crore. It has been stated that there was also another report, which was shown to the Court.

6. Be that as it may, even if it is considered that

the offer of the bank of Baroda was of Rs. 6.25 crore as per the valuation report available and the highest offer was of Rs. 1.03 crore coming on record and under these circumstances, if the learned Company Judge found it proper not to accept the offer by confirming the sale, such an exercise cannot be said to be erroneous. On the contrary, the exercise would be in the larger interest of the corpus of the company.

7. Additionally the learned Company Judge, in the impugned order, has also recorded the fact that the total chunk of property comprises of various plots of different characteristics namely; that on some plots, there were encroachments, for some plots, there were litigations and some plots were clear. Therefore, the learned Company Judge found that if the properties are sold as it is, comprising of all the plots simultaneously, it may create complications and, therefore, the learned Company Judge directed the OL to prepare a list of the plots, which were not occupied by anyone and in respect of which, there was no dispute or litigation and thereafter to undertake the process to sell and dispose of the plots at a later stage. In view of the above, if the property is segregated into various compartments of clear property, property with clog and/or property with encroachment, while disposing of the immovable properties, it would be rather in the interest of the company, since the clear property is bound to fetch higher price in comparison to the other two properties namely; with clog in the title and/or with encroachment or otherwise.”

3. When the matter was listed on various dates, it was thought it appropriate that there should be a proper auction and, accordingly, the following order came to be

passed on 02.07.2014:-

"This Court, while issuing notice on 02.11.2012 had passed the following order:

"Learned senior counsel appearing for the petitioner submits that the petitioner is willing to match the offer of Rs.6.25 crores made by the Bank of Baroda. Submission recorded."

Thereafter, the matter has been adjourned and certain applications have been filed for impleadment, which are allowed.

Mr. Ahmadi, learned senior counsel appearing for the applicant M/s. SNDDT Enterprises in IA 6-7/2013 has submitted that the applicant therein is prepared to pay Rs.25 crores for the property that was sought to be auctioned.

Not intending to lag behind, Mrs. Meenakshi Arora, learned senior counsel appearing for M/s. Star and Associates in IA No. 10-11/2013 submitted that the applicant herein is prepared to pay Rs.30 crores.

Mr. Pradhuman Gohil, learned counsel appearing for Mr. Ranjitsinhji N. Parmar in IA 8-9/2013 equalises the offer given by Mr. Ahmadi, i.e. Rs. 25 crores.

Mr. Sharan, learned senior counsel appearing for the petitioner has expressed the skepticism to the offers made by the applicants. It is his submission that if they intend to show their bona fides, they should deposit at least Rs.10 crores before this Court as the petitioner is also inclined to deposit Rs.10 crores.

In view of the aforesaid submission, we direct that the applicants, whose names have been

mentioned hereinabove as well as the petitioner shall deposit a sum of Rs. 10 crores each by way of bank draft drawn in favour of the Secretary General of this Court within three weeks from today. Needless to say that this amount may be treated as off-set price and thereafter this Court may think of going through the bidding process, if required. Let it be stated the offer is made keeping in view the auction notice. Nothing more, nothing less. After the deposit of the amount, the same shall be kept in a nationalised bank in a short-term interest bearing account.

List on 11.08.2014.”

4. After the said order was passed, certain deposits were made by 3 firms/companies. Regard being had to the said situation, on 19.08.2014, after referring to the earlier orders, the following order came to be passed :-

“We have been apprised by the Registry that deposits which were directed by this Court have already been made and, therefore, all the parties have complied with the order. In view of the aforesaid position, we direct the Official Liquidator to proceed with the fresh auction. The factum of auction shall be advertised in local Newspapers one in English and another in vernacular language. That apart there should be an advertisement in any daily National Newspaper having adequate circulation in the country, regard being had to the issue involved in such a matter. The upset price shall be fixed at Rs. 10 crores. The advertisement shall be issued within a period of two weeks from today. The bidding process shall be completed within four weeks therefrom. As far as M/s Star and Associates is concerned, if they offer a bid less than Rs.30 cores

that bid shall not be accepted but their claim of amount shall be considered subject to further orders of this Court. Similarly, as far as Mr. Ranjitsinh Parmar is concerned, his bid for less than Rs.25 crores shall not be considered but he would be entitled to claim refund of the amount subject to further orders of cost.

The Managing Director of M/s. SNDT Enterprises on whom cost of Rs.5 lakhs was imposed shall remain personally present on the next date of hearing if the cost, as directed, is not deposited before the Registry of this Court. In case the deposit is made, an affidavit shall be filed and he need not appear in person. Needless to emphasise that in the event of non-deposition, he shall personally appear and this Court may consider passing appropriate orders in that regard.

We may add that anyone who intends to bid, he has to deposit a sum of Rs.10 crores as earnest money so that he can claim parity with the three contenders who are before this Court. Barring what we have stated, the other conditions in the initial notice for auction shall remain the same. As the three bidders have deposited Rs.10 crores, they need not to deposit earnest money, as the deposition of that amount before this Court tantamounts to deposition of earnest money.

The place of auction will be at Ahmedabad. There will be stay of further proceedings before any Court relating to the property involved in this case.

The Registry shall keep the deposited amount in F.D.Rs. in a nationalised bank in a short-term interest bearing account.”

5. In the meantime, certain unwarranted, unhappy and uncalled for situation took place. The Official Liquidator filed a report before the learned Company Judge seeking permission to exclude certain plots from the original list and, accordingly, the learned Company Judge granted the extension of time. In our considered opinion, when the matter was subjudice before this Court, the learned Company Judge should not have dealt with the same regard being had to the fundamental concept of judicial discipline. Be that as it may, the Official Liquidator issued an advertisement in respect of 291 plots wherein it was clearly mentioned that the sale had been confirmed by the learned Company Judge in respect of 87 plots and the said confirmations were the subject matter of appeals before the Division Bench which were subjudice. Similarly, it was also mentioned that the order of *status quo* was operational in respect of 10 plots and the said order of *status quo* had been passed by a coordinate Bench of this Court. It was also postulated therein that certain plots had been encroached upon and certain plots were subject matter of registered sale deeds,

though no application had been filed before the Court for validation. In course of hearing of these petitions, we have been apprised that applications for validation are pending before the learned Company Judge.

6. On a perusal of the advertisement, it is clear as crystal that 113 plots admeasuring 91,960.70 sq. mtrs. forming a part of Annexure- A/I of the Corrigendum was absolutely free and available for auction.

7. At this juncture, it is pertinent to mention that the bids which were offered in respect of the plots that were put to auction were opened before us. M/s Manoj I Naik & Associates, the appellant herein, has offered Rs. ten crores eleven thousand; Mr. Laxmi Narayan Garg has made an offer of Rs. 10 crores; M/s Star & Associates has offered Rs. 31 crores. It is submitted by Mr. A. Saran, learned senior counsel for the appellant, that the Official Liquidator had no authority to issue a Corrigendum or to place a clarificatory note in respect of the plots. That apart, submits Mr. Saran, the Official Liquidator has committed grave illegality and, in a way, contempt of the

Court by approaching the High Court and stating that this Court had made certain oral observations which was really not correct, for everything was unequivocally stated in the order. Ordinarily, we would have proceeded to address the submissions made with emphasis by Mr. A. Saran, but as advised at present, we are refraining from doing so, for what has happened in the course of hearing.

8. Here the sad sad story begins. Mr. Tushar Mehta, learned Additional Solicitor General, while defending the stand of the Official Liquidator, though made certain efforts to justify his action, yet ultimately realised that it was a Sisyphean endeavour because the action may be genuine but should not have been undertaken. Mr. Tushar Mehta learned Additional Solicitor General, and Mr. Gaurav Agrawal, learned counsel, appearing for the Official Liquidator, while expressing regret about the steps taken by the Official Liquidator who has also rendered unconditional apology, submitted that the prices of the land have gone up and there is a valuation report by the Gujarat Industrial and Technical Consultancy Organisation Ltd (GITCO) which has estimated the price at

Rs. 66,15,22,000/- in respect of total freehold land available for sale, that is, 113 plots.

9. The said valuation report compelled us to think in a different way and impelled us to recapitulate certain authorities of this Court. In ***Ram and Shyam Company Vs. State of Haryana***¹, the Court observed thus:

“12. ...Owner of private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognized public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of

¹ (1985) 3 SCC 267

private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages the setting up of a welfare State.”

10. In the aforesaid case, the Court held auction in Court in respect of some quarries relating to minor minerals. The appellant therein who initially had given an offer of Rs.5.5 lakhs, eventually offered Rs.25 lakhs.

Taking note of the state of affairs, the Court observed:

“6. Shock and surprise was visible on the face of each one in the Court. Shock was induced by the fact that public property was squandered away for a song by persons in power who hold the position of trust. Surprise was that how judicial intervention can serve larger public interest. One would require multi-layered blind-fold to reject the appeal of the appellant on

any tenuous ground so that the respondent may enjoy and aggrandize his unjust enrichment. On this point we say no more.”

11. In **Committee of Management of Pachaiyappa’s Trust Vs. Official Trustee of Madras and Another**², the Court placing reliance on paragraph 12 in **Ram & Shyam Company (supra)** and Para 27 in **Chenchu Rami Reddy V. Govt. of A.P.**³, opined thus:

“28. The aforesaid observations in the context of public property and property belonging to religious and charitable endowments and institutions would equally apply to trust property as in the present case.”

12. In **Meerut Development Authority V. Association of Management Studies and Another**⁴, after referring to number of decisions including **Ram and Shyam Co. (supra)**, the Court reproduced a passage from Wayde’s treatise on Administrative Law⁵, which is as follows:

“The powers of public authorities are therefore essentially different from those of private

² (1994) 1 SCC 475

³ (1986) 3 SCC 391

⁴ (2009) 6 SCC 171

⁵ Administrative Law, 9th Edn., H.W.R. Wade & C.F. Forsyth

persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. So a city council acted unlawfully when it refused unreasonably to get a locally rugby football club use the city's sports ground, though a private owner could of course have refused with impunity. Nor may a local authority arbitrarily release debtors, and if it evicts tenants, even though in accordance with a contract, it must act reasonably and 'within the limits of fair dealing'. The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good."

13. At this juncture, we are obliged to state that in the case at hand, we are dealing with properties owned by a Company under liquidation and there has been price fixation by the Company Court. GITCO has estimated the valuation in praesenti. It is not in dispute, as per the orders passed by the Company Court as well as the Division Bench in Company Appeal and as understood by

this Court, 291 plots were to be put to auction and for the total number of plots the prices were offered by the bidders who had shown interest before this Court to bid and this Court had fixed the reserve price at Rs.10 crores. Counsel for the parties on 02.07.2014 had gone to the extent of saying that they were prepared to offer Rs.25-30 crores in the auction and we have already mentioned offers have come in the sealed cover.

14. Ordinarily, what we would have done is absolutely another matter. There can be no speck of doubt that the properties of a company under liquidation when sold, there has to be a proper auction, a fair one. It must fetch the maximum price. It takes care of statutory dues, dues of the workmen and the creditors. It has its own public character. In any case, it cannot be allowed to be sold for a song. The estimated price given by GITCO is more than Rs.66 crores for 113 plots, which are free. Therefore, we thought it seemly to ask the learned counsel appearing for the parties, if they are agreeable for open auction by giving their offers before this Court.

15. Mr. A. Saran, learned senior counsel, Mr. Braj Kishore Mishra, learned counsel, Mr. Vivek Singh, learned counsel and Mr. Amar Dave, learned counsel, conceded to the said suggestion. In the High Court initially Rs.6.25 crores had been offered, and we had fixed the reserve price at Rs. 10 crores and, to test the *bona fide* of the bidders, we had directed them to deposit Rs. 10 crores each before the Registry of this Court which has been done. Now the initial thought, graduated to a shock. When auction commenced, Mr. Braj Kishore Mishra, learned counsel, along with Mr. Vivek Trivedi, learned counsel, after obtaining instructions from Mr. S.D. Verma, a partner of M/s Star & Associates, informed the Court that they are willing to offer Rs. 31 crores for 113 plots which are free. Determined not to lag behind, Mr. A. Saran, being instructed by Mr. Amit Kumar, learned counsel, on behalf of the petitioner, ultimately raised the figure upto Rs.65 crores. Be it stated, we had requested the bidders to hike their price by Rs.5 crores so that the auction becomes real and not unnecessarily time-consuming. Mr. A. Saran, learned senior counsel, Mr. Braj Kishore Mishra, learned

counsel, Mr. Vivek Singh, learned counsel and Mr. Amar Dave, learned counsel, co-operated. Eventually, Mr. Braj Kishore Mishra, learned counsel, appearing for M/s Star & Associates enhanced the price to Rs. 70 crores. Mr. A. Saran, Mr. Vivek Singh and Mr. Amar Dave did not think, as instructed by their respective clients, to bid further. Thus, we find that the report submitted by GITCO appears to be correct. That is a redeeming feature to pardon the Official Liquidator and we do so.

16. In view of the aforesaid, we direct M/s. Star and Associates to deposit a sum of Rs.20 crores by the end of November, 2014 and another Rs.40 crores by March 15, 2015 before the Registry of this Court. The amount shall be deposited in an interest bearing fixed deposit in a UCO Bank, Supreme Court Compound, New Delhi. After Rs.60 crores are deposited, Rs. 10 crores that have been deposited by the company before the Registry shall be added and handed over by way of a banker's cheque to the Official Liquidator along with interest. Needless to emphasise, if any of the directions is not complied with or for any reason, extension is sought, Rs. 10 crores that has

been deposited before this Court along with interest shall stand forfeited and go to the account of the company. This aspect is also conceded to by Mr. Braj Kishore Mishra and Mr. Vivek Trivedi.

17. As far as deposits made by the petitioner and Mr. Ranjitsinh Parmar before this Court are concerned, the deposits shall be refunded along with interest within two weeks hence. The amount deposited by Mr. Laxmi Narayan Garg with the Official Liquidator shall also be refunded within a week from today. Any earnest money that has been deposited with the Official Liquidator shall also be refunded to the concerned company/person.

18. At this juncture, it is appropriate to mention that the rest of the plots in respect of which there is an order of *status quo* by this Court or which are subjudice before the appellate court on the company side before the High Court, needless to say, shall be dealt with at the subsequent date.

19. At this juncture, we are obligated to clarify that interlocutory applications which have been filed before

this Court can be filed before the High Court and the orders passed by the High Court shall be filed before this Court in these special leave petitions so that they can be appositely dealt with. The order of stay granted earlier, that is, directing stay of further proceedings before any Court relating to the property involved in this case, is modified to the extent indicated above.

20. Let the matter be listed for further hearing on March 24, 2015.

.....J.
(DIPAK MISRA)

.....J.
(ROHINTON FALI NARIMAN)

JUDGMENT

.....J.
(UDAY UMESH LALIT)

NEW DELHI;
OCTOBER 28, 2014