

DIVYA MANUFACTURING CO PVT LTD v. UNION BANK OF INDIA AND ORS¹

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Petitioners: Divya manufacturing co. pvt. Ltd.

Respondents: union bank of India and others

Date of judgment: 11/07/2000

Bench: M.B. Shah J and R.P. Seithi J

Facts

This is an appeal case which was decided in the year 2000. The appellants are Divya manufacturing co. (Divya for short) offered to purchase the properties of Tirupati Woolen Mills Ltd which was a liquidating firm. For the purchase they offered just a mere Rs.37 lakhs, this was before the intervention of the courts. Subsequently after the court bidding and before the learned single judge the purchase price was raised to Rs.85 lakhs and finally before the division bench the appellant increased it to Rs.1.3 crores. During this time the respondent No. 7 and 8 who were Sharma chemical works (Sharma for short) and Jay Prestressed products Ltd (Jay for short) respectively were not permitted to bid. Soon after the respondents pointed out that the market value of the properties was 2 crores and for these bona fides each of them was directed to pay the appellant Rs.70 thousand and deposit Rs.40 lakhs each.

Issues

- Whether the assets and properties of the company be sold to divya at the price valued by the official liquidator and/or valuer appointed by him?
- Whether divya may be directed to reemploy all the workers as agreed by the agreement dated 5.7.1997?

¹ (2000) 102 Comp Cas 66 (SC)

- Whether the official liquidator be restrained from taking further steps with regard to the sale of their assets and properties?

Law Involved

- Companies (court) rules, 1959

273. Procedure at sale.- Every sale shall be held by the Official Liquidator, or, if the Judge shall so direct, by an agent or an auctioneer approved by the Court, and subject to such terms and conditions, if any, as may be approved by the Court. All sales shall be made by public auction or by inviting sealed tenders or in such manner as the Judge may direct.

- Companies act, 1956

Analysis

From the facts and circumstances portrayed, it can be fairly inferred that the appellants initially grossly undervalued the properties of the company and sought to take an unfair advantage from the position of the liquidating firm. Had the court not been made to intervene by the respondents, the properties would have been purchased at the undervalued price and an injustice to the liquidating firm would have incurred. Rule 273 of the companies (court) rules, 1959 reads as “Every sale shall be held by the Official Liquidator, or, if the Judge shall so direct, by an agent or an auctioneer approved by the Court, and subject to such terms and conditions, if any, as may be approved by the Court. All sales shall be made by public auction or by inviting sealed tenders or in such manner as the Judge may direct.” It is well established that the court is the custodian of the rights and interests of the creditors and it bears within itself the responsibility to ensure that no wrong is done to the secured and unsecured creditors and other members affected by the liquidation of the firm. It is the duty of the court to satisfy itself that the price offered for the properties is reasonable and not undervalued². One important inference which was drawn from a leading case was that the acceptance of any offer for the

² *Gordhan Das Chunni Lal v. T. Sriman Kanthimathinatha Pillai*, AIR 1921 Mad 286
Rathnaswami Pillai v. Sadapathy Pillai, AIR 1925 Mad 318
S. Soundarajan v. M/s Roshan and Co, AIR 1940 Mad 42

purchase of properties does not vest any right of the offeror in the property itself, because the sale deed is subject to confirmation only after thorough investigations by the courts³. The appellant did not suffer any losses as they were adequately compensated by the both the defendant companies as they received Rs. 70 thousand from each of the defendants, thus no injustice was served to them either. However in our opinion the final auction which is going to be held by the court or even the previous auctions for that matter are open only to the three parties. They being the appellant and the two defendants are not fair as the auction should have been open to the general public and that there was no need to confine the bid between the three offerors only. Setting aside of the sale deed by the court is not just the matter of the offer price being undervalued due to any fraudulent or wrongful intentions, but the mere fact that the offer price which is being quoted is grossly undervalued is sufficient reason for the courts to set aside the sale deed and review the conditions of the sale again in the interests of the liquidating firm, its creditors, employees and other members.

The learned counsel for complainant presented that the request goes by the High Court putting aside the affirmed deal is on its substance unlawful and incorrect. He presented that before affirmation of offer for Divya all undertakings were made by the judges lastly the offer of appealing party to buy at Rs.1.30 crores was acknowledged and deal was affirmed. Around then, Jay-respondent No.8 had not expanded its offer of Rs.1.25 crores. Respondent No.7 was not allowed to offer as he didn't agree to the prerequisites specified in the promotion available to be purchased and, in this manner, on second July, 1998 preceding initiation of closeout deal, he was not allowed to take an interest in sell off. It is, hence, presented that after the deal is affirmed, consequent higher offer can't constitute a substantial ground for putting aside such affirmation. From there on the appealing party raised its offer to Rs.85 lakhs and consented to reemploy the laborers, so the learned Single Judge affirmed the deal to support its. As the said order was challenged before the Division Bench, the Division Bench ordered the Official Liquidator to conduct a new sale and at last the appealing party's offer of Rs.1.30 crores was acknowledged by the Court. As against this, scholarly counsel for the respondents presented that as the cost offered by the complainant is terribly deficient in contrast with the consequent offers by respondent Nos.7 and 8, the Court was supported in putting aside the deal.

³ *Navalkha and Sons v. Sri Ramanya Das and Ors*, (1969) 3 SCC 537

Conclusion

There is no doubt in the fact that courts are the guardians for the protection of rights and interests of the company as well as for the creditors. Thus, it is the obligation of the Court to see that the cost brought at the closeout is the adequate cost despite the fact that there is no proposal of anomaly or misrepresentation. As expressed above, in the present case, the deal procedures have a checkered history. Affirmation of the deal by a Court at an inadequate deficient cost, regardless of whether it is a result of any inconsistency or misrepresentation in the lead of offer, could be put aside on the ground that it was not simply and appropriate exercise of judicial discretion. In such cases, a significant involvement by the Court may avoid, to some degree, underbidding at the season of sale through Court. In the present case, the Court has inspected its activity of legal tact inside a most brief time. The suit in this case was dismissed. Interim order stands vacated. Henceforth, the Liquidator is ordered to take appropriate measures at the most punctual, by getting a request from the Court available to be purchased of the property by calling sealed tenders or by auction as per law in the wake of giving due exposure in the daily papers, especially, the daily papers having course in Delhi and in the State of Haryana with a held cost settled at Rs.2 crores (as advertised). The parties were directed to hold up under their respective expenses.