

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CAPP No.5 of 2014 (O&M)
DATE OF DECISION: 28.03.2014

Sh. V.K. Singh

.....Appellant

versus

M/s Pasupati Haryana Woolens Limited and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh, Advocate for the appellant

..

SANJAY KISHAN KAUL, CHIEF JUSTICE: (Oral)

CMA-15-2014 (for condonation of 21 days' delay in filing)
CMA-16-2014 (Seeking interim directions) &
CAPP-5-2014:

The assets of M/s Pasupati Haryana Woollens Limited, a company in liquidation were frozen in pursuance to the orders passed by the learned Company Judge with the Official Liquidator having taken possession of the same. The Official Liquidator sought permission from the Court for sale of movable and immovable properties post a meeting of the secured creditors stated to have been held on 25.7.2005. In the meantime, one of the secured creditors IFCI sought to proceed with the sale of the properties in pursuance to orders passed by the DRT against which restraint order was sought. The secured creditors filed application before the Company Court for vacation of stay predicated on the plea that the recovery certificate for `20,61,57,343/- with costs and *pendente lite* interest had been issued in its favour.

The learned Company Judge on a conspectus of the aforesaid facts, passed an order on 12.1.2006 permitting the sale of properties of the company in question in pursuance to the Recovery Certificate issued by DRT but subject to the confirmation by the learned Company Judge, course of action to which both the Official Liquidator and secured creditors agreed. It is in view of this agreement/undertaking that secured creditor IFCI was permitted to sell the property of the Company in liquidation in association with other secured creditors and Official Liquidator subject to confirmation by the Court and the sale proceeds were directed not to be disbursed by the DRT without orders of the learned Company Judge.

The undisputed position is that the aforesaid order became final and was not assailed by any party.

The controversy in the present appeal arises from the impugned order passed by the learned Company Judge on 10.1.2014 whereby the auction held pursuant to the aforesaid permission on 28.9.2006 with the highest bid of ₹7,27,47,000/- (₹20,000/- more than the reserved price) has been set aside and, thus, the auction purchaser is before us.

A perusal of the impugned order shows that the history of how the assets were put to auction and restriction qua the same put by learned Company Judge in the earlier proceedings have been taken note of as also the allegations questioning the auction. The rationale for the same is reflected in paragraphs 11 and 14 of the impugned order. Only one bidder against the present appellant had participated and the findings on record by the learned Company Judge are that it was a managed show

and he would have directed a probe into the reasons for the shady auction but for the lapse of time of six years. The land and property of the Company is at a prime location and at the time when the bid was held in 2006, the bid sought to be offered has been rated as grossly inadequate and far less than the prevalent market value, the same being land measuring 9 acres on the national highway. The bid, as per the opinion of the learned single Judge, lacks transparency and does not inspire confidence.

The learned single Judge has taken into account the judicial pronouncements for the decision that mere participation in the auction did not confer an indefeasible right on the appellant being the auction bidder.

We have heard learned senior counsel for the appellant and find no infirmity in the impugned order.

Learned counsel seeks to contend that the price must be taken into consideration not from today's market perspective but from when he participated in the auction. Insofar as this plea is concerned, no doubt, for determining whether the bid was fetching adequate price or not, the benchmark on the date of auction would be applied.

However, that is exactly what the learned single Judge has done while rejecting the bid as inadequate as on that date. The mere fact that the learned single Judge has thereafter mentioned the passage of six years of time does not mean that the bid is sought to be rejected, as per the principle of the current value prevalent of the property in question. It is a single bid accepted with allegation of what transpired at the auction as also the location of land of 9 acres on the highway which

has persuaded the learned single Judge to come to conclusion that the price is inadequate as on the date of the auction.

We are also in agreement with the proposition that there cannot be any infeasible right in the appellant to get the property having participated in the auction.

In the end, we may note that the conditional order passed by the learned Company Judge on 12.1.2006 is material. This is so as the secured creditor is only concerned with the recovery of such amount as may satisfy its debt. The role of the learned Company Judge is much larger as if adequate price is fetched not only will other secured creditors and unsecured creditors be taken care of but ultimately even the shareholders may get some amount dependent on the assets and liability position. It is a salutary role to be played by the learned Company Judge who is not merely a stamping authority for the auction held.

The learned Company Judge has also taken care to say that whatever interest the amount deposited by the appellant would earn, would also enure for the benefit of the appellant.

We are, thus, of the view that it is not a fit case for exercising the appellate jurisdiction.

Dismissed.

**(SANJAY KISHAN KAUL)
CHIEF JUSTICE**

28.03.2014
parkash*

**(ARUN PALLI)
JUDGE**