

(2009) 08 P&H CK 0259

High Court Of Punjab And Haryana At Chandigarh

Case No: CAPP. No. 35 of 2009

IFCI Venture Capital Funds Ltd.

APPELLANT

Vs

Bhiwani Denim and Apparel Ltd.
(In Liquidation)

RESPONDENT

Date of Decision: Aug. 18, 2009

Acts Referred:

- Companies Act, 1956 - Section 483

Citation: (2011) 109 SCL 51

Hon'ble Judges: M.M. Kumar, J; Jaswant Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This appeal filed u/s 483 of the Companies Act, 1956, is directed against the order dated 21-11-2008, passed by the learned company judge dismissing the application of the appellant for confirmation of sale in favour of its sister concern namely IIDL Infrastructure Development Ltd. (HDL). The order of the learned company judge reads as under :

The applicant has made a prayer that sale in favour of IVCF and/or its nominee IFCI Infrastructure and Development Ltd. be confirmed in respect of IVCF. The companies are sister concerns as in view of the order passed in C.A. No. 294 of 2008 confirming the sale in favour of IFCI Infrastructure and Development Ltd. and the prayer is rejected.

2. We have heard learned counsel who has argued that once IIDL is sister concern of the appellant then there cannot be any possible objection to confirm the sale in favour of such an entity. It has been mentioned that there is a memorandum of understanding between the appellant and IIDL in this regard. The appellant alone had participated in the bidding and was found to be the highest bidder. It is

appropriate to mention that the property of the company (in liquidation) namely Plot Nos. 81 and 82, Sector 21, HUDA, Industrial Area, Bhiwani was put to auction by the Official Liquidator in the presence of the secured creditors. The appellant was the highest bidder to the tune of Rs. 15.76 crores which was accepted by the Official Liquidator on the recommendation of the secured creditors. The appellant has claimed that the IIDL is claiming to be its sister concern. On that basis the appellant applied to the learned company judge for confirmation of sale in favour of IIDL. The memorandum of understanding between them was associated as a factor in support of the application.

3. After hearing learned counsel we are of the view that there is no privity of contract between the Official Liquidator and IIDL. It is undisputed that both IFCI Venture Capital Funds Ltd. and IIDL are independent entities and incorporated as companies. The participation in the bidding by one company cannot result into confirmation of sale in favour of another company. Such a course would lead to pernicious results. On one hand, the nominee-company would not be bound by the terms and conditions of the auction proceedings and on the other hand, such a proposition would encourage wagering contracts. Cartel of bidder would commence their activities which are likely to flourish to the detriment of the secured creditors, workers" due and even unsecured creditors. Therefore it is neither conceivable in law nor in tune with the policy of the law to confirm a sale in favour of a company other than the one which participated in auction. Accordingly, we find no legal infirmity in the order of the learned company judge warranting admission of the appeal. Hence, the appeal fails and the same is dismissed.