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(2010) 06 KL CK 0082

High Court Of Kerala

Case No: Co. Appeal No. 37 of 2010

Santhosh Kumar	APPELLANT
Vs	
The Official Liquidator and Sri. G. Nagendran	RESPONDENT

Date of Decision: June 24, 2010

Citation: (2011) 162 CompCas 143

Hon'ble Judges: Pius C. Kuriakose, J; C.K. Abdul Rehim, J

Bench: Division Bench

Advocate: N.J. Johnson, for the Appellant; No Appearance, for the Respondent

Final Decision: Dismissed

Judgement

C.K. Abdul Rehim, J.
This appeal is preferred against order of the Company Court in C.A.337/10 in C.P.11/2003. The appellant herein is a person who had participated in the tender for disposal of assets of the company in liquidation. With respect to the tender, the Official Liquidator had published notices in "Malayala Manorama" as well as "New Indian Express" dailies. 12 sealed tenders were received. The highest among them was Rs. 1,62,88,000/-. The Official Liquidator filed a report seeking to accept the highest offer. The highest bidder is the the second respondent herein.

2. The company application was filed by the appellant stating that, he could not properly inspect the properties and therefore the correct idea with respect to the market value of the property could not be gathered. The price quoted by him was Rs. 1,58,51,585/- only. But through the company application he is making an offer of Rs. 1,73,00,000/-.

3. Heard Sri. N.J. Johnson, learned Counsel for the appellant and Sri. Raju Joseph, learned Counsel for the second respondent. Sri. T.O. Xavier, Counsel on behalf of Directors of the Company as well as Sri. K. Moni appearing for the Official Liquidator were also heard. The Company Court observed that, the belated offer now made by the appellant could not be accepted because such practice will put other persons who

participated in the tender to prejudice and if such offers are accepted that will give room for other persons to approach this Court making further offers, which will lead to an endless process. It is also observed that sanctity of the sale through sealed tenders has to be approved and the proceedings of sale held by the Official Liquidator with due publication has to be considered as a process which has got such sanctity, liable to be approved.

4. Learned Counsel for the appellant pointed out decisions of the Honourable Supreme Court in Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, and FCS Software Solutions Ltd. Vs. LA Medical Devices Ltd. and Others, in support of his argument that the Company Court is always at discretion to accept higher offers than the highest one received in tenders, even after acceptance of such highest offer. But the facts of those cases warrant justification for exercise of such discretion, whereas we do not find any such factual situation in the case at hand justifying discarding of the tender proceedings conducted. The appellant who had actually participated in the tender proceedings could not be permitted to make any higher offer after completion of all formalities of the tender and after the sealed tenders were opened. Further, we notice that the offer made by the appellant when compared with the highest offer received, is only a marginal increase.

5. Under the above circumstances, we are of the considered opinion that the conclusions of the learned company Judge does not call for any interference. Hence, the appeal deserves no merit and the same is hereby dismissed.