
(2018) 10 RAJ CK 0008

Rajasthan High Court (Jaipur Bench)

Case No: Company Application No.31 of 2018, Company Petition No. 1 of 2003

M/s Ark Corporation Ltd
@APPELLANT@Hash
M/s Ace Laboratories
Ltd

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 1, 2018

Acts Referred:

Companies Court Rules, 1959 " Rule 9

Citation: (2018) 10 RAJ CK 0008

Hon'ble Judges: Sanjeev Prakash Sharma, J

Bench: Single Bench

Advocate: GK Garg, KJ Mehta, Anuroop Singhi

Final Decision: Allowed

Judgement

1. Instant Company Application has been filed by the applicant -Ritika Vegetable Oil Pvt. Ltd. under Rule 9 of the Companies Court Rules, 1959 for

offering a bid of Rs.2,51,00,000/- in respect of the property under auction bearing Plot No.19-B, Old Industrial Area, Alwar (Raj.) ad-measuring 10848

square meters. The application is supported by a Board Resolution of the said Company and has been filed by the authorized representative of the

Company.

2. The background which requires to be noted in brief is that the respondent-M/s ACE Laboratories Ltd. (company in liquidation) was directed to be

wound up and this Court directed the Official Liquidator on 05/07/2018 to publish the sale notice regarding properties of the Company in liquidation.

Accordingly a sale notice was published on 17/07/2018 by the Official Liquidator in newspapers i.e. the Times of India (All Editions); Dainik Bhaskar

(Delhi Edition) and Himachal Dastak at Himachal Pradesh. The last date of receipt of tender was 13/08/2018 upto 5.00 pm. The reserved price fixed

was Rs.2,35,98,400/- with EMD of Rs.23,60,000/- with regard to property of the respondent company in liquidation situated at Plot No.19-B, Old

Industrial Area, Alwar. The EMD was to be deposited by way of demand draft and the prescribed tender form was available on cost of Rs.1,000/-.

3. A report was submitted to this Court by the Official Liquidator pointing out that the highest bid offered was by Shri Ajay Agarwal for a sum of

Rs.2,36,00,000/- against the reserved price of Rs.2,35,98,400/-. It was also submitted that the concerned bidder has deposited the EMD while the

EMD of unsuccessful bidders was returned. There were two other bidders namely; ECR Buildtech Ltd. Bhiwadi and Shri Dhiraj Poply of Alwar who

participated in bid.

4. The present company application has been moved stating that the applicant could not participate in pursuance of the tender notice dated 16/07/2018

but is willing and inclined to submit a bid higher than the amount received by the Official Liquidator. It is stated that the applicant came to know about

sale of the above subject land only on 16/08/2018. It is stated that the newspaper namely; Times of India has no Alwar Edition and the advertisement

could not be located in Nav Bharat Times of Alwar Edition. It is also stated that the tender notice provides for the offer to be revised/raised even after

opening of tender and is subject to confirmation. The applicant has also submitted copy of the cheque bearing no.261024 dated 18/08/2018 amounting

to Rs.63,00,000/-. Learned counsel for the applicant relies on the judgment rendered by the Apex Court in the case of M/s Navalkha and Sons Vs. Sri

Ramanya Das and ors.: (1969) 3 SCC 537; Divya Manufacturing Company (P) Ltd. and ors. Vs. Union Bank of India and ors.: (2000)6 SCC 69 and

FCS Software Solutions Ltd. Vs. LA Medical Devices Ltd. and ors.: (2008)10SCC44.

5. The Official Liquidator has filed reply and has opposed the application pointing out that a lot of money has been spent on the auction process which would go to waste.

6. The application has also been contested to by the highest bidder Mr. Ajay Agarwal and he has objected that since the EMD has not been submitted

by the applicant within time, the application ought not be allowed and the application moved by the applicant is for ulterior motives. It is also submitted

that the applicant is having Plots No.20, 21 and 22 which are adjacent to the subject property and the applicant was having full knowledge about the

subject property and has moved this company application melafidely. The instant company application moved by the applicant cannot be entertained as

he did not participate in the bid process. Learned counsel appearing for the highest bidder Ajay Agarwal in support of his submission has relied on the

judgments rendered by the Apex Court in the case of Vedica Procon Pvt. Ltd. Vs. Balleshwar Greents Pvt. Ltd. and others: 2015(10) SCC 94;

Pegasus Assets Reconstruction Pvt. Ltd. Vs. Haryana Concast Limited and anr.: 2016(4) SCC 47; Valji Khimji and Company Vs. OL of Hindustan

Nitro Products (Gujarat) an others: 2008(9) SCC 299; B. Arvind Kumar Vs. Union of India: 2007(5) 745; M/s. Navlakha and sons Vs. Sri Ramanya

Das & ors.: 1969(3) SCC 537; Undavilli Nagarthnam and anr. Vs. Reddi Satyanarayana Murthi and ors: 1976 (4) SCC 20 as well as judgment of

Madras High Court in the case of Mohindeen Pichai Rowther and others: AIR 1940 (Madras) 43 and judgment of Patna High Court in the case of

Seema Devi Vs. The Official Liquidator and others:

Company Appeal (DB) No.15/2015, decided on 11/05/2016.

7. Heard learned counsel for the parties.

8. The Apex Court in the case of M/s Navalkha and Sons Vs. Sri Ramanya Das and ors. (supra) has laid down the principles which should govern

confirmation of sale which provide as under: "6. The principles which should govern confirmation of sales are well-established. Where the

acceptance of the offer by the Commissioners is subject to confirmation of the Court the offeror does not by mere acceptance get any vested right in

the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against

the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is

the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is

satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In *Gordhan Das*

Chuni Lai v. T. Sriman Kanthimathinatha Pillai A.I.R.1971 Mad. 286 it was observed that where the property is authorised to be sold by private

contract or otherwise it is the duty of the Court to satisfy itself that the price fixed is the best that could be expected to be offered. That is because the

Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be

exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in

Rathnaswami Pillai v. Sadapathi Pillai AIR1925Mad318 . and *S. Souridarajan v. M/s. Roshan & Co.* AIR1940Mad42 In *A. Subbaraya Mudaliar v. K.*

Sundarajan AIR1951Mad986 it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold at an

inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing

the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even though there is

no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well-settled namely that once the court comes to the

conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer

already received.Ã¢â€

9. The judgments cited by learned counsel for the highest bidder Mr. Ajay Agarwal follow the law as laid down in the case of M/s Navalkha and Sons

Vs. Sri Ramanya Das and ors. (supra), however, all the cases relate to the matter where the Court has already accepted the highest bid. The principle

is that once the Court has already confirmed a sale, thereafter it would not lie within the discretion of the Court to later on set aside the confirmation

of sale on the ground that another bidder may have come up after the confirmation of sale claiming a higher bid.

10. The judgments cited by learned counsel for the applicant as noted above, are cases where the Court has conducted fresh bidding or has exercised

its judicial discretion applying mind to the valuation report and taken decision to conduct an inter-se bidding.

11. In a recent judgment rendered in the case of M/s. Raiganj Consumer Forum Vs. Union of India & ors.:2018 (10) SCALE 687, the three Judges

Bench of the Apex Court has conducted auction sale with regard to the properties and the best offer which was received in relation to the properties

in action was Rs.721 crore. The Apex Court has directed the concerned bidder in the said case to either deposit the amount before the Court or

furnish Bank guarantee. Further, it directed as under:-

Ã¢â€2. We make it clear that if anybody else is still interested in participating in the bid, they are free to deposit the said amount of Rs. 721 Crores or

furnish bank guarantee before 02.05.2018, without prejudice to their contentions before this Court and the final bid will take place on 02.05.2018 in the

Court.

3. Needless to say that none other than those who have deposited/furnished bank guarantee for the said amount of Rs. 721 Crores in the name of

Registrar, Supreme Court of India before 02.05.2018 shall be permitted to participate in the bid.Ã¢â€

12. Although in aforesaid case, subsequently the Apex Court has noted that the highest bidder also withdrew his Bank guarantee. However, the orders

passed by the Apex Court in the said case throw a light on the procedure which can be conducted by this Court.

13. Taking into consideration that the sale has not been confirmed by the Court and also taking into consideration that the highest bidder has offered

the amount which is just and merely above the minimum reserved fixed price while the applicant has offered much higher sum, in the interest of the

Company in liquidation and its creditors and for the purpose of distribution of the dividend to the stake holders in the assets of the company in

liquidation, it is deemed appropriate that an open bid is conducted by the Official Liquidator subject to condition that the applicant shall deposit 25%

amount of the bid offered by him as quoted in the application with the Official Liquidator and also furnish a Bank guarantee for the remaining amount.

If the said amount is deposited then, the earlier bidders shall be invited by the OL to participate in the open bid by informing them additionally. A notice

would be published in the notice board and web-site with regard to the open bidding for the properties of the company bearing Plot No.19-B, Old

Industrial Area, Alwar (Raj.) ad-measuring 10848 square meters. A notice shall also be published in the local newspaper of Alwar alone. The

exercise shall be conducted by the Official Liquidator in presence of Dy. Registrar (Judicial) within a period of three weeks henceforth and submit his

report to the Court thereafter on 01/11/2018. However, if the applicant does not fulfill the condition, OL shall submit its report on the basis of earlier

bid for appropriate order.

The instant company application is accordingly allowed.

Let the main Company Petition No.1/2003 be listed on 01/11/2018