

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Aqeel Ahmed Abbassi** and **Agha Faisal, JJ.**

High Court Appeal No. 188 of 2018

Mohammad Jameel

vs.

ERIDANIA (SUISSE) SA & Others.

For the Appellant

Ms. Naheed A. Shahid, Advocate

Date of Hearing

22.06.2018

JUDGMENT

Agha Faisal, J: The crux of the matter herein is whether in the present facts and circumstances a stranger to proceedings for winding up of a company could assail and sustain a challenge to an order, whereby confirmation of sale as well as handing over of property, auctioned in pursuance of the liquidation of the assets of the said company, was approved.

2. The learned Single Judge of this Court was seized of a petition for winding up, being JCM No. 24 of 2007 ("**Petition**"), which Petition was allowed vide order dated 13.08.2008 ("**Winding up Order**"). In pursuance thereof the Official Assignee was appointed as Official Liquidator to carry out the winding up of the company ("**Company**"), subject matter of the Petition.

3. In the course of the liquidation proceedings the moveable and immovable assets of the company were put to auction by the Official Assignee and in respect thereof a sale proclamation / auction notice was

published in the daily 'Jang' and in the daily 'Dawn' on 24.05.2016 and 25.05.2016, respectively. In pursuance thereof, bids were received by the Official Assignee and assets under auction were sought to be conveyed to the highest bidders.

4. The asset sale relevant for the purposes of the present appeal is the land, bearing Plot Nos. E-150 to E-153, measuring 3.664 acres, situated in North Western Industrial Zone, Port Qasim Authority with plant and machinery of a rice factory and all construction thereon ("**Property**"). The highest bid received in regard thereof was reported vide Official Assignee's Reference No. 13 of 2018 and it was prayed that the offer / sale in respect of the Property may be confirmed by the Court and further that the Official Assignee may be permitted to hand over the possession of the Property, along with original title documents, to the auction purchaser.

5. The aforesaid Official Assignee's reference was heard and the same was allowed vide order dated 30.05.2018 ("**Impugned Order**"), the contents whereof are reproduced herein below:

"At the joint request of the Auction Purchaser as well as learned Official Assignee Reference No.13/2018 is taken up for orders. It appears that this reference has been placed pursuant to order dated 07.05.2018, whereby, highest offer of Mr. Uzair Abdul Sattar to the extent of Rs.19,00,00,000/. (Rupees Nineteen Crores) with payment in 15 days was accepted. Through this Reference, it reflects that balance payment has been made and learned Official Assignee has requested for confirmation of the sale as well as handing over the possession of the property and documents. Accordingly, Reference No.13/2018 is allowed as prayed in Para.6."

6. The present appellant assailed the Impugned Order vide this high court appeal and at the very outset an office objection was raised seeking a response as to how the present appeal was maintainable when the

appellant was not a party to the Petition, wherein the Impugned Order was rendered.

7. Ms. Naheed A. Shahid, learned counsel presented the case of the appellant and submitted that the appellant is a shareholder in the Company, winding up in respect whereof was ordered vide the Winding up Order. Per learned counsel the Impugned Order was unlawful and liable to be set aside and the arguments put forth in such regard are encapsulated herein below:

- i. It was submitted that the auction of the Property was conducted in a manner otherwise in conformity with the legal and procedural requirements in respect thereof and that the provisions of Order 21 Rule 66 and 68 CPC had not been complied with.
- ii. It was contended that under Order 21 Rules 89 and 90 CPC, the objections of the appellant to the auction proceedings should have been heard and considered prior to any confirmation of sale and in the absence of the same, the sale of the Property could not have been validly confirmed.
- iii. It was submitted that the sale price accepted in respect of the Property was lower than that which should have been obtained in the opinion of the appellant.

8. We have heard the learned counsel for the appellant at considerable length and have also perused the record available on file in light of the applicable law for the time being in force.

9. It is evident that the appellant was not a party to the Petition and that at no occasion did the appellant assail any constituent of the winding

up proceedings, which was allowed back in 2008 vide the Winding up Order.

10. The office objection questioning the locus standi of the appellant to institute the present appeal was placed before the learned counsel for the appellant and her sole response thereto was that since the appellant was a shareholder in the Company, therefore, it vested the appellant with the right to assail any order rendered with respect to the Company.

11. We are not persuaded by this argument as the Company was a body corporate and its identity was distinct from that of its shareholders. The learned counsel for the appellant was unable to present any provision of the law that would enable the appellant to maintain a challenge as framed in the present appeal.

12. It was submitted by the learned counsel that the auction proceedings with respect to the Property were in due dissonance with the prescriptions of Order 21 Rules 66 and 68 CPC, however, no specifics were substantiated in furtherance of such an allegation.

13. Notwithstanding the fact that Order 21 CPC pertains to proceedings in execution of a decree, the learned counsel was unable to demonstrate how the provisions for the issuance of the proclamation for sale by public auction and that pertaining to the timing of sale were infringed.

14. The record of proceedings filed by the appellant does not demonstrate the presence of any objections, of the kind raised herein or otherwise, being raised by the appellant before the Official Liquidator, or any other forum, while the relevant proceedings for the public auction were underway.

15. This leads to the other objection of the appellant that his objections to the auction were to be considered and adjudicated under Order 21

Rules 89 and 90 CPC prior to issuing the confirmation of sale in respect of the Property.

16. Once again the record is silent as to the existence of any application to set aside the sale having been preferred by the appellant before any forum of competent jurisdiction. The learned counsel also did not raise any verbal arguments regarding the presence of any such challenge having been preferred by the appellant.

17. It may be relevant to observe that an application under Order 21 Rule 90 may only be entertained when an applicant deposits the statutorily mandated security amount. Learned counsel did not demonstrate the deposit of any such security perhaps because no application in such regard was preferred.

18. The objection raised with regards to the sale price obtained at auction in respect of the Property cannot be sustained by this Court. It is prima facie apparent that the auction proceedings, conducted under the auspices of the Official Assignee of this Court (acting as the Official Liquidator), were undertaken with a view to obtain the maximum price for the assets under auction. It is manifest from the Official Assignee's Reference No. 10 of 2017 dated 06.10.2017 that earlier offers for a lower amount were not considered as they were determined to have been on the lower side.

19. Even otherwise an alleged inadequacy of sale price is not a valid ground to set aside auction proceedings and that once a sale has been confirmed, the same creates vested rights in favor of the auction purchaser. Reliance is placed in such regard upon a Division bench judgment of this Court in the case of *Muhammad Rafiq vs. Federation of Pakistan & Others* reported as 2013 CLD 1667.

20. It is apparent from the Impugned Order that the auction proceedings in respect of the Property have been concluded, the sale has been confirmed and the possession of the Property, along with its title documentation, have been ordered to be conveyed to the auction purchaser. In such a scenario the rights of the auction purchaser also merit serious consideration.

21. In a pioneering judgment dating back almost a century it was held by the Privy council, in the case of *Nanhelal and another v. Umrao Singh* reported as AIR 1931 Privy Council 33, that once a sale has been effected a third party's interest intervenes.

22. The honorable Supreme Court maintained, in the case of *Hudaybia Textile Mills Ltd. and others v. Allied Bank of Pakistan Ltd. and others* reported as PLD 1987 Supreme Court 512, that once an auction purchaser acquires an interest in a property, the same may not be whittled away by resort to procedural incongruities.

23. A Division Bench of this Court deliberated upon the sanctity of a confirmation of sale, in the case of *United Bank Limited v. Messrs A.Z. Hashmi (Pvt.) Limited and 8 others* reported as 2000 CLC 1438, and held that when a sale was confirmed, an auction purchaser acquired valuable rights in the property which could not be disturbed.

24. The ratio expounded by the honorable Supreme Court, in *Muhammad Attique v. Jami Limited and others* reported as PLD 2010 Supreme Court 993 and *Mumtaz ud Din Feroze v. Sheikh Iftikhar Adil and others* reported as PLD 2009 Supreme Court 207, delved into the nature of rights that are created upon the acceptance of an offer and the subsequent confirmation of sale. The pronouncements afford sanction and protection to a duly determined bona fide auction purchaser.

25. In view of the foregoing we are of the considered opinion that the auction proceedings in respect of the Property have attained finality and that no grounds have been made out to merit any interference in the bona fide rights of the auction purchaser.

26. We have carefully considered the Impugned Order, notwithstanding the unmaintainability of the present appeal, and no apparent irregularity or illegality has been found therein. The Impugned Order is found to be in due consonance with the law and as a consequence thereof the same is hereby maintained and upheld.

27. In view of the foregoing this Court arrived at the conclusion that the present appeal is not maintainable and is even otherwise devoid of merit and hence was constrained to dismiss the same in limine vide a short order 22.06.2018. Above are the reasons for the aforesaid short order.

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