

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDYw3

Company Application No.1680 of 2011

in

Company Application No.1525 of 2011

in

Company Application No.568 of 2010

in

Company Application No.1877 of 2009

in

Company Petition No.39 of 2000

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Date:28th November, 2011

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Between:

M/s.Midwest (India) Investors Welfare Association,

Rep. by its President Sri K.Nanjundappa,

S/o.Late Sri K.Venkaiah, aged about 79 years,

R/o.Flat No.214, II Block, Janapriya Apartments,

Gandhi Nagar, Hyderabad – 500 080.

...Applicant

A n d

Reserve Bank of India, rep. by its

Assistant General Manager, Saifabad,

Hyderabad – 500 004 & Ors.

....Respondents

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

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ORDER:

This Company Application has been taken out by M/s.Midwest (India) Investors Welfare Association under Section 446(1) of the Companies Act, 1956, r/w. Rule 117 of the Companies (Court) Rules, 1959, to conduct fresh auction in respect of the land admeasuring Ac.9.16 guntas in Survey No.451, Puppalaguda Village, Rajendranagar Mandal, Ranga Reddy District, by setting aside the order, dated 01.11.2011 passed in Company Application No.1525 of 2011 and Company Application No.568 of 2010 in Company Petition No.39 of 2000.

2. The applicant represents investors of M/s.Midwest (India) Industries Limited-2nd respondent Company (in provisional liquidation). One Dr.N.R.Pinna floated M/s.Medwest (India) Industries Limited. The founder promoters are the said Dr.N.R.Pinna and his parents, brothers and sisters. After floating M/s.Midwest (India) Industries Ltd., in the name of the said Company, huge amounts were collected from the public by way of deposits, giving various attractive offers. The said funds were utilized not only to acquire the assets in the name of M/s.Medwest (India) Industries Limited, but also in the name of the individual family members as well as other group companies, floated by the same set of promoters as founder members. As the deposits were not repaid on maturity, various proceedings were initiated before different Courts. As a result, in order to seek protection, Dr.N.R.Pinna as well as M/s.Medwest (India) Industries Limited-2nd respondent Company (in provisional liquidation) approached writ Court, by filing Writ Petition No.32498 of 1998. During the pendency of the said writ petition, Advocate Commissioners were appointed for the purpose of realizing the amounts from the companies so as to pay to the depositors. Ultimately, the writ court after going elaborately how the funds collected by Dr.N.R.Pinna in the name of M/s.Medwest (India) Industries Limited were diverted and invested in acquiring various assets not only in the name of the group companies, but also in the individual names, directed to treat all the group companies as one including the assets standing in the name of the family members of Dr.N.R.Pinna, and further directed the Reserve Bank of India to initiate

proceedings of winding up of the said company. Accordingly, on a Company Petition (C.P.No.39 of 2000), filed by the Reserve Bank of India, the Official Liquidator, attached to this Court was appointed as a provisional liquidator and was directed to take possession of all the assets of the Company. In the process, some of the items of the property were already disposed of. Since the said sale proceeds were insufficient, further steps were initiated to dispose of other items of properties, standing in the name of the group companies as well as in the name of the individuals, which were already treated as that of the properties of the main group company i.e., M/s.Midwest (India) Industries Limited, which is under provisional liquidation. The Official Liquidator filed Company Application No.2332 of 2004 for effecting sale of four items of properties. Series of claim petitions came to be filed and all the claim petitions ended in dismissal. The claimants unsuccessfully filed appeals and the said appeals ended in dismissal and even the Special Leave Petitions filed by them before the Supreme Court also ended in dismissal. The Official Liquidator representing M/s.Medwest (India) Industries Limited-2nd respondent Company (in provisional liquidation) filed Company Application No.1877 of 2009 seeking permission to sell the properties in four lots. The said application came to be allowed on 31.03.2010 permitting the Official Liquidator to proceed with the publication of auction fixing the up-set price. No offers received in respect of two items viz., Ac.5.00 guntas and Ac.4.16 guntas comprising S.No.451 of Puppalaguda village, Rajendranagar Mandal, Ranga Reddy District. Therefore, the applicant herein filed Company Application No.568 of 2010 to reduce the up set price. This Court, by order, dated 16.03.2011 appointed K.Dhanapathi Rao and Associates, Chartered Engineers, Govt. Regd. Valuers, as the Valuer for the valuation of Lot Nos.3 and 4. Accordingly, K.Dhanapathi Rao and Associates submitted a valuation report in sealed cover. The sealed cover was opened in the public court on 30.04.2011 and registry was directed to furnish copies of valuation report to the Official Liquidator as well as the applicant. The applicant herein filed objections to the valuation report. This Court, on 09.06.2011 directed the Official Liquidator to come up with an application seeking permission of the Court to call for tenders without indicating any up set price and thereafter conduct a meeting giving opportunity to all the tenderers to quote their price. The applicant herein was given liberty to give vide publicity and procure the tenders and submit to the Official Liquidator. The Official Liquidator filed Company Application No.675 of 2011 seeking permission to sell the land admeasuring Ac.9.16 guntas in Survey No.451

as a single lot by inviting sealed tenders. The said application came to be allowed on 15.07.2011 permitting the Official Liquidator to publish the sale notice in Hyderabad Editions of 'SAAKSHI' (Telugu) and 'ANDHRA JYOTHI' (Telugu) daily newspapers and 'DECCAN CHRONICLE' (English) daily newspaper. Accordingly, the Official Liquidator published sale notice in Hyderabad Editions of 'SAAKSHI' Telugu Daily on 04.08.2011, 'ANDHRA JYOTHI' Telugu daily newspaper on 05.08.2011 and 'DECCAN CHRONICLE' English daily newspaper on 23.08.2011. The Official Liquidator opened the three sealed tenders on 24.08.2011 at 11.00 A.M. Out of the three, only one tenderer namely M/s.Great India Mining Private Limited has given its offer of Rs.1,26,00,000/- along with requisite EMD of Rs.1,25,00,000/-. The other two tenderers namely K.L.N.Reddy, Hyderabad, and M/s.ABHI – Bus Services (India) Pvt. Ltd. did not enclose the requisite EMD with their tenders. The sole bidder who appeared before the Official Liquidator refused to increase his offer beyond Rs.2,34,00,000/-. The Official Liquidator moved Company Application No.1525 of 2011 to take his affidavit on record. The affidavit details the auction-cum-negotiations conducted on 24.08.2011. On 20.09.2011 this Court issued notice to the persons who submitted their offers to the official liquidator to be present before this Court on 17.10.2011 at 2.15 p.m. The Official Liquidator was also permitted to receive the offers, if any by that date. The Official Liquidator placed on record the offers received from six parties. It was represented to this Court on 17.10.2011 that some more offers were likely to receive, if some time was allowed. This Court directed all the intending purchasers to submit their offers before the Official Liquidator in a sealed cover and place the same on 01.11.2011, on which date, sealed covers submitted by P.Anjaneyulu Gupta, Devireddy Sanjeeva Reddy, K.L.Sreedhar Reddy and D.Swaroop Reddy were opened in the public Court. The offers received by that date are detailed hereunder:

| NAME OF THE PARTY | EMD AMOUNT | AMOUNT OFFERED |
|------------------------------------------------|------------------|------------------|
| 1) M/s.Japs Housing & Infrastructure Pvt. Ltd. | Rs.1,25,00,000/- | Rs.4,00,00,000/- |
| 2) M/s. Great India Mining Pvt. Ltd. | Rs.1,25,00,000/- | Rs.2,34,99,999/- |
| 3) Sri L.Purushotham Naidu | Rs.1,25,00,000/- | Rs.5,00,00,000/- |
| 4) Sri Devireddy Sanjeeva Reddy | Rs.1,25,00,000/- | Rs.5,04,00,000/- |
| 5) Sri K.L.Sreedhar Reddy | Rs.1,25,00,000/- | Rs.5,26,00,000/- |
| 6) Sri P.Anjaneyulu Gupta | Rs.1,25,00,000/- | Rs.4,50,00,000/- |

| | | |
|------------------------|------------------|------------------|
| 7) Sri D.Swaroop Reddy | Rs.1,25,00,000/- | Rs.4,50,00,000/- |
|------------------------|------------------|------------------|

Keeping in view the amounts offered by them, minimum bidding up-set price was fixed at Rs.5,26,00,000/-. The offerers were given liberty to revise their offers. The highest offer of Rs.5,56,00,000/- was made by Sri K.L.Sreedhar Reddy-3rd respondent herein. The said offer came to be accepted on that date and he was directed to pay the balance amount of Rs.4,31,00,000/- before the Official Liquidator on or before 01.12.2011. The Earnest Money deposited by the other participants were directed to be returned to them under proper acknowledgement. The instant application has been moved to set aside the order, dated 01.11.2011, passed in Company Application Nos.1525 of 2011 and Company ApplicationNo.568 of 2010 in Company Petition No.39 of 2000 and conduct a fresh auction.

3. It is stated in the affidavit filed in support of the application that the bidders formed a syndicate and did not allow the amount to cross Rs.5,56,00,000/-. For better appreciation, I may refer para.10 of the affidavit filed in support of the application, which reads as hereunder:

“10.It is submitted that the enquiries of the petitioner revealed that the bidders formed a syndicate and did not allow the bid amount to cross Rs.5,56,00,000/-. When the petitioner Association made some efforts, one Sri N.Nagesh Reddy gave an offer of Rs.6,99,39,999/- (which is about Rs.1,43,39,999/- more than the highest bid accepted by this Hon’ble Court) along with demand drafts bearing Nos.141751, dated 3.11.2011 and 003388, dated 2.11.2011 issued by IDBI Bank, Ameerpet by letter dated 9.11.2011. Their letter along with the photocopies of demand drafts is submitted herewith. The petitioner is also trying to collect other offers, which are substantially higher than the highest bid accepted by this Hon’ble Court. One such offer was received by way of SMS from Smt.S.Shantisri, Plot No.1145, Road No.58, Jubilee Hills, who made an offer of Rs.6,00,00,000/- with a pay order No.096772, drawn on Axis Bank. But her letter is yet to be received. It is therefore, just and necessary that this Hon’ble Court may conduct fresh auction by setting aside the order dated 1.11.2011, without confirming the sale in favour of the highest bidder Sri K.N.Sridhar Reddy as per the orders, dated 1.11.2011.”

4. The 3rd respondent, who is the highest offerer and whose offer has been accepted on 01.11.2011, resisted the application.

5. Heard Sri M.V.Durga Prasad, learned counsel appearing for the applicant and Sri M.Anil Kumar, learned Standing Counsel for the Official Liquidator representing the 2nd respondent Company (in provisional liquidation) and Sri C.V.Mohan Reddy, learned Senior Counsel appearing for the 3rd respondent.

6. Sri M.V.Durga Prasad, learned counsel appearing for the applicant submits that the offer made by the 3rd respondent cannot be said to be a fair offer as the report of the valuer viz., K.Ganapathi Rao and Associates indicates minimum value is Rs.9,15,00,000/- and as per the valuation certificate issued by the Registration and Stamps Department, the value of the land is Rs.1,09,00,000/- per acre, which comes to around Rs.9,81,00,000/- and odd. He would further submit that the persons, who participated in the auction held on 01.11.2011 formed a syndicate and increased the bid amount marginally. Leaned counsel took me extensively the role played by the applicant in initiating proceedings against the Company (in provisional liquidation) to protect the interests of the investors therein. In support of his submissions, reliance has been placed on the decisions of the Supreme Court in ***M/s.Navalkha v. Sri Ramanya Das; Divya Manufacturing Company (P) Ltd. v. Union Bank of India*** and ***FCS Software Solutions Ltd. v. LA Medical Devices Ltd.***

7. In ***M/s.Navalkha***'s case (1 supra), the Supreme Court held that 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. 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.

8. The Supreme Court in ***Divya Manufacturing Company (P) Ltd.***'s case (2 supra) and ***FCS Software Solutions Ltd.***'s case (3 supra), referred the ***M/s.Navalkha***'s case (1 supra) with approval.

9. Sri C.V.Mohan Reddy, learned Senior Counsel appearing for the 3rd respondent submits that once the offer of 3rd respondent has accepted and he has been declared as successful bidder, sale cannot be set aside except on the grounds of fraud or material irregularity. He would further submit that subsequent offer received by the applicant cannot be looked into as the said offerer has not deposited the entire amount offered by them. The 3rd respondent being the successful bidder deposited the entire bid amount as on this day by putting his properties to sale at a low price and if the sale is set aside, he would suffer grave and irreparable loss. Further, auction has been held on 01.11.2011 in a transparent manner in the presence of the applicant and the applicant has not raised an objection when the 3rd respondent's offer has been accepted. The applicant herein has failed to make out any valid ground of fraud or material irregularity etc., and in which case the application is liable to be dismissed. He would also contend that the 3rd respondent though paid Rs.5,56,00,000/- for the entire extent of Ac.9.16 guntas, he is prepared to receive only Ac.5.00 acres even to give up the other Ac.4.16 guntas which comes under Full Tank Level and that one of the subsequent offerers is no other than the person who claimed the property as that of him by moving Company Application No.955 of 2005 and the said application ended in dismissal and such is his conduct, his offer cannot be said to be *bona fide* one. He would further contend that the valuation report cannot be strictly based in Court sales as there are variable factors and if the auction held in the public court is set aside on the ground of highest offer is not a fair offer, a new threat to certainty of court sale will be introduced. In support of his submissions, reliance has been placed on the decision of the Supreme Court in ***Kayjay Industries v. Asnew Drums.***

10. I have given my anxious consideration to the rival contentions of the parties. The valuation report submitted by K.Dhanapathi Rao & Associates indicates that Ac.5-00 is coming under open space zone and Ac.4-16 guntas is coming under water body (FTL) The uses permitted and uses prohibited in open space zone have also been indicated in the report. After appraisal and on an analysis, the market value of the land has been assessed at Rs.12.20 crores and realizable value has been assessed at Rs.19.15 lakhs. As per the certificate issued by the Registration & Stamps Department, the market value of the land is Rs.1,09,00,00,000/- per acre.

Keeping in view the valuation report and valuation certificate, let me now examine whether the offer made by the third respondent at Rs.5,26,00,00,000/- can be said to be an adequate price ?

11. The condition of confirmation of sale being a safeguard against the property sold at an inadequate price , it will not only proper but necessary for the Court in exercise of discretion which it undoubtedly has of accepting or refusing the highest bid. The principles which should govern confirmation of sales are well established. 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. The Court cannot ignore the valuation report and also the market value certificate. When the price offered by the third respondent which came to be accepted on 01-11-2011 is compared with the value indicated in the valuation report of K.Dhanapathi Rao & Associates and the market value certificate issued by the Registration & Stamps Department, I am in no doubt to conclude that the price offered by the third respondent is grossly inadequate. No doubt, on an earlier occasion, no offers were received by the Official Liquidator and the property was subsequently notified. It was only on re-notification of sale and on *inter se* bidding among the offerors, the third respondent offered Rs.5,56,00,00,000/-. The approach of the Company Court is to get highest price so as to satisfy maximum claims against the company (in liquidation).

12. Since the price offered by the third respondent is in no way nearer to the value indicated in the valuation report or the market value certificate, I am inclined to set aside the sale proceedings conducted by this Court on 01-11-2011.

13. Accordingly, the application is allowed . The Official Liquidator is directed to return the amount deposited by the third respondent forthwith.

B.SESHASAYANA REDDY, J

Dt.28-11-2011.

Cs/rar

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

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