

Before Permod Kohli, J.

**RADHA RAMAN BUILDERS AND DEVELOPERS
PVT. LTD.,—Applicant**

versus

HARYANA CONCAST LTD. (IN LIQUIDATION),—Respondents

C.A. No. 632–634 of 2005

In C.P. No. 133 of 2003

20th March, 2008

Companies (Court) Rules, 1959—Rl. 272—High Court ordering winding up of a Company—Official Liquidator (OL) issuing sale notice—Applicant highest bidder—Earnest money deposited—Condition (9) of terms & conditions of sale requires to deposit 25% of bid amount within 2 weeks from date of sanction and balance sale price within 3 months from date of confirmation of sale by Court—O.L. directing applicant to deposit 25% of bid amount immediately—No mention regarding any sanction in letter of O.L.—Rule 272 provides for sanction of Court before sale of property and confirmation of Court after sale is finalized—Letter of OL mentioning that bid of applicant may be accepted by High Court—Not only contrary to sale notice but also against spirit of Rule 272—Once OL is granted sanction by Court for sale of property, it is OL who had to accept bid acceptance is subject to confirmation by Court—No reply by OL to communication of applicant seeking time to deposit balance 25% & 75% amounts—Letter demanding 25% of offer amount sent at an incomplete address—No fair opportunity to represent case before ordering forfeiture of earnest money—No justification to forfeit earnest money of applicant—OL not in possession of entire property—Six acres of land in possession of DHVPL when sale notice issued—Since sale notice itself deceptive in regard to possession & capable of misleading intending purchaser sale itself shall vitiate & liable to be set aside.

Held, that Rule 272 of the Companies (Court) Rules, 1959 provides for sanction of the Court before the sale of the property and confirmation of the Court after the sale is finalized. Sanction for demanding 25% of the

bid amount is not envisaged by Rule 272. Once the Court grants sanction to the Official Liquidator for sale of the property then the procedure prescribed in the sale notice alone is required to be followed and observed. Clause 9 seems to have not been properly drafted and the word 'sanction' envisaged there is not referable to any Rule or Law nor any authority to grant such sanction has been specified. In any case even if sanction is considered to mean acceptance by the Official Liquidator, the applicant was required to be given two weeks to deposit the balance 25% of the bid amount from the date of acceptance of the bid by the Official Liquidator. Letter dated 20th May, 2005 does not indicate that the bid of the applicant has been accepted by the Official Liquidator and is subject to confirmation by the Court. To the contrary, this letter mentions that the bid of the applicant may be accepted by this Court is not only contrary to the sale notice but also against the spirit of the Rule of 272. Once the Official Liquidator is granted sanction by the Court for the sale of the property, it is the Official Liquidator who had to accept the bid such acceptance is subject to confirmation by the Court.

(Para 8)

Further held, that under Clause 22(A) it was clearly notified that the Official Liquidator is in possession of the entire properties and this is sufficient to mislead any intending purchaser. If it is found that the entire property was not in possession of the Official Liquidator, the Official Liquidator cannot shed his responsibility or absolve himself of his responsibility as the custodian of the property of the Company in liquidation merely by incorporating certain conditions in the sale notice conveying that he has no such responsibility.

(Para 14)

Further held, that since the sale notice itself is deceptive in regard to the possession and capable of misleading the intending purchaser, the sale itself shall vitiate and is liable to be set aside.

(Para 14)

Vikas Vashisht, Advocate, *for the applicant-petitioner.*

Puneeta Sethi, Advocate, *for the Official Liquidator.*

Aman Chaudhary, *Advocate, for DHVPL.*

PERMOD KOHLI, J.

(1) Through the medium of this applications, the applicant who has been the highest bidder in the auction held on 23rd February, 2005 seeks an order for :-

- (i) quashing the letters Annexure A-12, Annexure A-13 and Annexure A-14,
- (ii) permission of the Court to deposit 25% of the bid amount; and
- (iii) confirmation of the sale of assets of Company in favour of the applicant and also sought restraint order restraining the Official Liquidator from selling/transferring the assets/properties of the company to any other person.

(2) It may be useful to briefly notice the factual background. This Court ordered winding up of the respondent-Company namely Haryana Concast Limited vide order dated 28th October, 1999 passed in C.P. No. 198 of 1999 and the Official Liquidator attached to this Court was appointed as the Liquidator of the Company in Liquidation. The Liquidator was permitted to sell the assets and property of the Company vide order dated 28th May, 2004 passed in C.P. No. 133 of 2003 in association with the representatives of the secured creditors. As a consequence of the aforesaid order, the Official Liquidator issued sale notice which was published in The Indian Express (all editions), The Tribune (English edition), Punjab Kesari (Hindi, Ambala, Delhi & Jalandhar edition) on 6th February, 2004. The highest bid of Rs. 29.12 Crore was received from M/s Radha Raman Builders & Developers Pvt. Ltd. The Official Liquidator had constituted a committee comprising of the Official Liquidator and Shri V.D. Kumar, AGM, Bank of India, ARB, New Delhi. The said committee considered the highest bid and then decided to accept the same. At the time of auction M/s. Radha Raman Builders & Developers Pvt. Ltd. deposited the earnest money of Rs. 1.08 Crore on 23rd February, 2005. The Applicant, highest bidder, wrote a letter dated 25th February, 2005 to the Official Liquidator seeking permission to deploy its own security personnel and the Official Liquidator permitted it to do so without entry into premises of the Company. It is alleged that the applicant employed 16 guards outside the premises of HCL and all the guards informed the applicant that out of the 40 acres

of land of the Company in Liquidation put to sale, six acre of land was in possession of DHVPL where 132 KVA sub-station has been installed for supply of the electricity. It is further alleged that the applicant *vide* its letter dated 28th February, 2005 informed the Official Liquidator that it would not deposit the amount unless the possession of land is vacated by DHVPL. It is, however, admitted case of the parties that the Official Liquidator *vide* his letter dated 20th May, 2005 informed the applicant that its highest bid offer for Rs. 29.12 Crore for purchase of the assets and properties of the Company in liquidation might be accepted by the Court and the applicant was asked to deposit 25% of the amount of the purchase price immediately. The applicant, however, claims that *vide* his letter dated 29th June, 2005; he informed the Official Liquidator that he is willing to deposit the amount subject to prior sanction by the Court. It is, however, in-disputed position that the applicant did not deposit 25% of the bid money, as demanded by the Official Liquidator. On its failure to deposit the money, the Official Liquidator called a meeting of the Secured Creditors on 11th August, 2005 wherein it was decided to forfeit the earnest money of the applicant amounting to Rs. 1.08 Crore and to proceed with the further process. The Official Liquidator accordingly called M/S. Ma Bhagwati & Co., Sharanpur who expressed willingness to purchase the entire unit of the Company for a sum of Rs. 21.21 Crore and also deposited Rs. 23 lacs as earnest money. The Official Liquidator found that the amount is reasonable and filed C.A. No. 459 of 2005 under Section 457(3) of the Companies Act for confirmation of the sale in favour of M/S Ma Bhagwati & Co., Sharanpur in the alternative for re-advertisement of the sale of the assets.

(3) The present applicant filed C.A. Nos. 632 to 634 of 2005 for directions as noticed herein above. While explaining the circumstance for non-deposit of 25% of the bid money, the applicant had prayed for confirmation of the sale in its favour being highest bidder at Rs. 29.12 Crore. The circumstances which are indicated for non-deposit of 25% of the bid amount are enumerated as under :—

- (i) that in-terms of Clause 9 of the terms and conditions of sale, 25% of the bid amount becomes payable within two weeks from the date of sanction and the balance sale price within three months from the date of confirmation of sale by the Court.

- (ii) In condition No. 22(A) of the terms and conditions of sale, the Official Liquidator had stated that the entire possession of the property of the Company was with him whereas six acres of land was in possession of DHVPL at the time of issuance of the sale notice.
- (iii) That applicant has not been provided any opportunity to show cause nor afforded any hearing for forfeiting the earnest money deposited.

(4) I have heard learned counsel for the parties and perused the record.

(5) For the consideration of the contentions raised by the parties, some of the relevant clauses are required to be examined, the same are reproduced hereunder :—

1. “The sale of the properties/assets as per schedule will be on “as is where is basis” and “as is whatever there is basis” subject to such reserve price as stated in para 2 below or any price as may be fixed by the Official Liquidator and subject to the confirmation by the Hon’ble High Court of Punjab and Haryana and Chandigarh.
2. ————XXX———XXXX———
3. The inspection of the properties/assets will be allowed to the intending purchasers at the above address at address mentioned above on 14th February, 2005, 15th February, 2005 and 16th February, 2005 between 11.00 to 4.00 p.m. The purchaser may take inspection of properties/assets to be sold. Even if the purchaser does not take inspection he shall be deemed to have inspected all properties assets when he is making offer for purchase of the same. All the bidders/ tenders or their authorized representatives are requested to remain present at the time of opening of bids/tenders for negotiation and for raising their respective bids. The Official Liquidator reserves the right to allow reply of bids/negotiations for reply bids, any time till it is confirmed by the Hon’ble High Court of Punjab and Haryana at Chandigarh.

4. To 8 xxx-----xxxx-----xxxx
9. The highest bidder whose bid is accepted by the Official Liquidator shall deposit the balance 25% bid amount within two weeks of the date of sanction by way of cheque/pay order/demand draft with the Official Liquidator and he will have to pay the balance price within two month in case of Schedule No. 1, 2 and 3, sold separately and in 3 months in case of composite offer from the date of confirmation of the sale by the Hon'ble High Court, Chandigarh.
10. If the purchaser fails and/or neglect for any reason or any account whatsoever to apply in full the amount and/or the balance of the purchase price as provided herein above and/or to complete the sale in terms of these conditions, then and in that event the Official Liquidator will be at liberty without tendering or assigning any reason or assurance to the purchaser or his Advocate/Advocates. If any, to threat the contract for sale as at an end and to forfeit the moneys paid to him by the purchaser and shall be entitled to proceed to hold another side (by public auction or otherwise) at such time and subject to such condition and in such manner for all purposes and in all respect as the Official Liquidator may in his direction think fit and proper. The defaulting purchaser shall also liable to make good any deficiency in the price arising on account of such resale and shall also pay all costs, charges and other expenses incurred by the Official Liquidator arising out of such resale and relating to and incidental to such default of the purchaser. Such sum shall be payable by the purchaser within one month from the date of receipt of notice from the Official Liquidator in this regard. In the event of nonpayment thereof or any part thereof, the Official Liquidator will be at liberty to claim and recover the whole or the balance as the case may be from the purchaser as and when by way of liquidated damages with interest thereon at 18% per annum from the date fixed for completion of the earlier purchase. In the event of any surplus arising on such sale, the defaulting purchaser shall not be entitled to the same and the same shall be credited to the present company (in liqn.)

11 to 17. xxxxxxxx———xxxxx———xxx

18. The intending purchaser must satisfy themselves in all respect as the title encumbrances, area, boundary etc. of the properties. The Official Liquidator gives no guarantee or warranty in respect of the said property offered for sale.

19 to 21 xxxxxxxx———xxxxx———xxxxx

22. The purchaser is purchasing the said property with full knowledge of the following facts

(A) The Official Liquidator attached to Punjab and Haryana High Court, Chandigarh as the Liquidator appointed in Company Petition No. 198 of 1999 is in possession of the said property and selling the same pursuant of the orders of Hon'ble High Court, Chandigarh dated 28th May, 2004 passed in C.P. No. 133 of 2003 in C.P. No. 198 of 1999.

(B) x x x x x x x

(C) x x x x x x x x x x x

23. The Official Liquidator will give no covenant other than the usual covenant against encumbrances to acts and things done by the Official Liquidator or to which he has been party.

24. The purchaser shall at the time of submitting his tender sign and subscribe his name and give his full address and all written communication, notices and processes shall be deemed to have been delivered and served upon the purchaser by posting the same at such address.”

(6) Condition No. 9 provides that the highest bidder whose bid is accepted by the Official Liquidator is under obligation to deposit balance 25% of the bid amount (after adjustment of the earnest money) within two weeks of the date of sanction and the balance purchase price within three months in case of composite offer. *Vide* letter dated 20th May, 2005, the applicant Company M/S Radharaman Builders & Developers Pvt.

Limited was asked to deposit 25% of the bid offer with the Official Liquidator immediately. The letter is reproduced hereunder :—

“Sir,

In continuation of this office letter no. HCL/Liqa./201 dated 12th April, 2005 on the captioned subject. I am to inform you that your highest bid Offer for Rs. 29,12,00,000 of M/S Haryana Concast Ltd. (in liqn.) may be accepted by Hon’ble Punjab and Haryana High Court, Chandigarh the rest 25% of the bid offer to be deposited by you to this office immediately.

This is for your information and office record please.”

(7) There is no mention regarding any sanction in the aforesaid letter. The applicant was simply asked to deposit 25% of the bid amount immediately with reference to earlier letter dated 12th April, 2005. However, the copy of the said letter has not been placed on record. Condition No. 9 requires three months time to deposit the amount from the date of sanction. The word “sanction” has not been explained anywhere in the sale notice nor the authority who is to sanction has been specified. Rule 272 of the Companies (Court) Rules, 1959 deal with the sale of the property which reads as under :—

“272-Sale to be subject to sanction and to confirmation by Court :—

Unless the Court otherwise orders, no property belonging to a company which is being wound-up by the Court shall be sold by the Official Liquidator without the previous sanction of the Court, and every sale shall be subject to confirmation by the Court.”

(8) This rule provides for sanction of the Court before the sale of the property and confirmatin of the Court after the sale is finalized. Sanction for demanding 25% of the bid amount is not envisaged by Rule 272. Ms. Puneeta Sethi, learned counsel appearing for the Official Liquidator has tried to explain that sanction envisaged by Clause 9 means sanction by the sale committee. However, there is neither any reference to sale committee in the auction notice nor under any Rule or Law. Once the Court grants sanction to the Official Liquidator for sale of the property then the procedure prescribed in the sale notice alone is required to be followed and observed Clause 9 seems to have not been properly drafted and the word “sanction”

envisaged therein is not referable to any Rule or Law nor any authority to grant such sanction has been specified. In any case even if sanction is considered to mean acceptance by the Official Liquidator, the applicant was required to be given two weeks to deposit the balance 25% of the bid amount from the date of acceptance of the bid by the Official Liquidator. Letter dated 20th May, 2005 does not indicate that the bid of the applicant has been accepted by the Official Liquidator and is subject to confirmation by the Court. To the contrary, this letter mentions that the bid of the applicant may be accepted by this Court is not only contrary to the sale notice but also against the spirit of the Rule of 272. Once the Official Liquidator is granted sanction by the Court for the sale of the property, it is the Official Liquidator who had to accept the bid but such acceptance is subject to confirmation by the Court. The communication dated 20th May, 2005 itself is misleading which has provided a room for creating a dispute. The applicant, however, *vide* its communication dated 29th June, 2005 asked the Official Liquidator to give him 60—90 days time to deposit 25% of the bid amount from the letter of acceptance and 75% of the balance amount within one year alongwith interest after the expiry of 90 days period. The Official Liquidator even after receipt of the letter dated 29th June, 2005 never communicated to the applicant whether the offer made in this letter has been accepted or rejected. The Official Liquidator, however, held a meeting with the secured creditors on 11th August, 2005 and forfeited the earnest money deposited by the applicant on the ground that the applicant has failed to deposit the requisite 25% of the bid amount. It is pertinent to note here that in the minutes of the meeting dated 11th August, 2005 it has been specifically mentioned that the letter demanding 25% of the offer amount for purchase was sent at the address of the tender which has been returned un-delivered. This establishes the contention of the applicant that the applicant was not provided any opportunity. In the reply filed, the official Liquidator has placed on record Xerox copy of the envelop sent by the speed post. No such address is available in the village. The applicant has disputed the letter. The address on the envelop reads as under :—

“The Director,
M/s. Radharaman Builders and Developers
Pvt. Ltd., Jounti, Delhi.”

(9) It is stated by learned counsel appearing for the applicant that this is not correct address of the applicant-bidder. In response thereto Ms. Puneeta Sethi has referred to Clause 24 of the terms and conditions of sale wherein it is provided that all the communications and notices and process shall be sent to the name and address given by the purchaser at the time of submitting his tender and any communication sent on the said address shall be deemed to have been delivered and served upon the purchaser. The Official Liquidator was asked to show the address furnished by the applicant at the time of submission of tender which reads as under :—

“Radharaman Builders and Developers Pvt. Ltd.,
Regd. Office, Village Tatesar,
P.O. Junti, Delhi-110081.”

(10) Even letter dated 29th June, 2005 sent by the applicant to the official Liquidator contains this address whereas the address of the speed post envelop is incomplete. Admittedly, letter in question was never delivered to the applicant as is evident from the minutes of meeting dated 11th August, 2005. Therefore, the applicant had no option to deposit 25% of the bid amount irrespective of the fact that it was not given two weeks time to deposit from the date of alleged sanction. As noticed above, Official Liquidator also failed to reply to the letter dated 29th June, 2005 accepting or rejecting the offer of the applicant for payment of the bid money over a period of time mentioned in the aforesaid communication. These circumstances also do not justify forfeiture of the earnest money of the applicant.

(11) The sale notice itself clearly indicate that land measuring 40 acre was put to sale.

(12) In clause 22(A) referred to above, the Official Liquidator clearly spelt out that he is in possession of the said property and selling the same pursuant of the orders of the Court. Clause 23 of the sale notice further provides that the Official Liquidator will give no covenant other than the usual covenant against encumbrances. Both these clauses are sufficient to convey to the interested bidder that the entire property is held and possessed by the Official Liquidator. However, it is admitted case of the Official Liquidator that he was not in possession of the entire property and six acres

out of 40 acres of land was in possession of DHVPL when the sale notice was issued. Hence, sale notice itself was deceptive. Even if the applicant would have deposited 25% of the amount as mentioned in the letter dated 20th May, 2005, the Official Liquidator was/is not in a position to deliver the possession of the entire property to the applicant, the successful bidder. My attention has been drawn to various orders passed by this Court. In the order dated 7th July, 2006 passed by this Court it has been recorded that Dakshin Haryana Vidhut Parasam Ltd. (DHVPL) is in possession of four acres (6 acres) of land as per report of the Official Liquidator and a notice was directed to be issued to DHVPL, Hissar through its Superintending Engineer to show cause as to how they have entered into possession of the land of the Company in liquidation. In the order dated 17th May, 2007 it is recorded that counsel for the HVPNL wants to seek instructions with regard to the fact whether the HVPNL is ready to purchase the land under its occupation or not. This clearly establishes that the Official Liquidator was/is not in possession of the entire land and six acres of land out of 40 acres of land notified for sale is in possession of the applicant/Company.

(13) Ms. Puneeta Sethi appearing on behalf of the Official Liquidator has vehemently argued that the applicant cannot be permitted to take benefit of the condition 22(A) of the sale notice as he is supposed to know about the factual position at site. She has referred to the sale notice where it is mentioned that the sale in respect of properties is on "As is where is basis and whatever there is basis". She has also referred to Clause 3 of the Terms and Conditions of sale which *inter alia* provided for inspection of the property/assets. Clause 18 requires, the intending purchasers must satisfy themselves in all respect as to the title, encumbrances, area, boundary etc. of the property. It is contended by her that it was the duty of the purchaser to have made proper enquiry with regard to the possession before entering into bid and the Official Liquidator is not responsible for any defect in title, possession and area etc.

(14) I am not impressed by this argument. The argument, in fact, not only goes contrary to other stipulation in the sale notice and the Terms and Conditions of sale but also against the very spirit of the doctrine of fairness. Under Clause 22(A) it was clearly notified that the Official Liquidator is in possession of the entire properties and this is sufficient to mislead any intending purchaser. If it is found that the entire property was not in

possession of the Official Liquidator, the Official Liquidator cannot shed his responsibility or absolve himself of his responsibility as the custodian of the property of the Company in liquidation merely by incorporating certain conditions in the sale notice conveying that he has no such responsibility. The fact of the matter is that the Official Liquidator has to ensure that the property put to sale is free from any encumbrances, charges or lien. It is for this purpose that on the passing of the winding up order, the Ex-Directors are asked to file a statement of affairs with the Official Liquidator to enable him to know all the facts regarding the properties and assets of the Company and to find out whether it is subject to any charge or is encumbered in any manner. The Official Liquidator has also the power and authority to find out from the Registrar of the Companies regarding the charge over the property and assets of the Company and make any other investigation as may be deemed appropriate. Thus responsibility of the Official Liquidator does not cease by incorporating any clause like 18 or any similar clause in the Terms and Conditions of sale. Since the sale notice itself is deceptive in regard to the possession and capable of misleading the intending purchaser, the sale itself shall vitiate and is liable to be set aside.

(15) There is sufficient material in record referred to herein above that the applicant was not provided fair opportunity to represent his case before ordering forfeiture of his earnest money of Rs. 1.08 crore. It has not been established that letter dated 20th May, 2005 asking him to deposit 25% of the bid amount was ever served upon him. The extreme penalty of forfeiture of huge amount of Rs. 1.08 crore imposed in the manner as it has been done, the applicant condemned unheard and otherwise also, the sale notice itself being defective and deceptive, the applicant cannot be fastened with the liability of forfeiture of the earnest money. Accordingly, order of forfeiture of earnest money is hereby set aside. Since the sale notice has been found to be defective and deceptive, the prayer for confirmation of sale in favour of the applicant, the highest bidder, is also rejected.

(16) Amount of earnest money be refunded to the applicant.

(17) Disposed of.

R.N.R.