

RAJASTHAN FINANCIAL CORPORATION JAIPUR v. M/S JAIN BANDHU SNEH RESORTS PRIVATE LIMITED , (2022-2)206 PLR 644 (SC) , 2022 SceJ 0553 , 2022 PLRonline 5566

SUPREME COURT OF INDIA

Before: Justice L. Nageswara Rao, Justice B. R. Gavai.

RAJASTHAN FINANCIAL CORPORATION JAIPUR And Others – Appellants

versus

M/S JAIN BANDHU SNEH RESORTS PRIVATE LIMITED And Another – Respondents

Civil Appeal No. 3460 of 2022 (Arising Out of SLP (Civil) No. 2950 of 2020) with Civil Appeal Nos. 3462-3463 of 2022 (Arising Out of SLP (Civil) No. 4224-4225 of 2020) and Civil Appeal No. 3461 of 2022 (Arising Out of SLP (Civil) No. 5473 of 2020)

27.04.2022

Financial and Debt Laws - Auction - Bid accepted in 2013 - Confirmation stayed by the High Court in the laonee-borrowers writ - Ultimately, property was handed over to the Auction Purchaser only in 2018, after making the entire payment - High Court set aside the confirmation of sale only on the ground that the Corporation has not taken into account the escalation of the prices in property between 2013 to 2018 - Except this ground, there is no fault found with the auction proceedings and finalization of the sale in favour of the Auction Purchaser - Sale in favour of the Auction Purchaser could not have been set aside by the Division Bench on this ground alone - However, Corporation ought to have considered imposing interest on the bid amount from 2013 to 2018 - We reject the submission made on behalf of the Auction Purchaser that it is not liable to pay anything more than the amount that was offered for the property in 2013 - Corporation failed in its duty in not taking into account the lapse of five years from the date of auction while handing over the possession of the property to the Auction Purchaser - The value of the property has undoubtedly increased during the said period - Auction Purchaser directed to pay interest at the rate of 12% per annum on Rs. 11.11 crores for the period from 2013 to 2018.

For the Appellant : Manish Singhvi, Arpit Parkash, Abhinav S. Raghuvanshi, Abhinav S. Raghuvanshi, K. N. Rai, Puneet Jain, Christi Jain, Umang Mehta, Shruti Singh, Yogit Kamat, Mann Arora, Shailendra Sharma, Sunit Kumar, Advocates. For the Respondent : K. N. Rai, Abhinav S. Raghuvanshi, Christi Jain, Advocates

JUDGMENT

L. Nageswara Rao, J.

Leave granted.

1. The judgment dated 19.08.2019 of the High Court of Rajasthan in D.B. Special Appeal (Writ) No. 605 of 2018 and the order dated 04.01.2020 passed in DB Review Petition (Writ) No. 187 of 2019 has been challenged in these Appeals.

For the sake of convenience, M/s. Rajasthan Financial Corporation has been referred to as "The Corporation", M/s. Sun On Mount Hotels Pvt. Ltd. has been referred to as the "Auction Purchaser" and M/s. Jain Bandhu Sneh Resort Pvt. Ltd. as the "Borrower".

2. The Borrower availed a term loan of Rs. 2.14 Crores from the Corporation on 29.12.1999. Thereafter, another term loan of Rs. 41.24 Lakhs was taken by the Borrower from the Corporation on 20.04.2001. The Borrower defaulted in repayment of the loan for which, the Corporation issued a notice to the Borrower for repayment of the loan amount along with outstanding interest. Aggrieved thereby, the Borrower filed a Writ Petition which was disposed of by the learned Single Judge on 15.09.2006. The High Court found no merit in the Writ Petition. However, the Corporation was directed to consider the representation of the Borrower for settlement of outstanding amounts, if made. Not satisfied with the judgment of the learned Single Judge, the Borrower filed a Writ Appeal seeking extension of time for repayment of the outstanding dues and for waiver of penal interest. Accepting the request for extension of time for making repayment of the outstanding loan amount, the Division Bench of the High Court granted time till 31.03.2009 subject to the Borrower either depositing 10 lakhs per month or clearing up the account, whichever is earlier. The Corporation was directed to consider the request of the Borrower with respect to waiver of penal interest and it was also clarified by the High Court that in case of default, the Writ Petition and the Writ Appeal would stand dismissed.

3. Though the Corporation waived 50% of the penal interest, the Borrower failed to repay the loan by 31.03.2009. The Borrower refused to accept the waiver of 50% of penal interest as offered by the Corporation and insisted upon a full waiver, which request was not agreeable to the Corporation.

4. The Corporation took possession of the resort of the Borrower on 19.10.2012. Later, on the instructions of the Industries Minister, Government of Rajasthan, the Corporation agreed to give another opportunity to the Borrower to deposit 20% of the outstanding balance into the loan account and to provide a suitable schedule for repayment of the outstanding loan. On compliance of the said conditions, the Corporation was willing to handover the possession of the resort to the Borrower. However, the Borrower did not respond to such an offer made by the Corporation. Having left with no other alternative, the Corporation invited bids for the sale of the resort by a notice dated 16.03.2013 which was also published in two daily newspapers having circulation in Rajasthan and Delhi. The said notice was the subject matter of the challenge in a Writ Petition filed by the Borrower wherein while praying for quashing of the said notice, the Borrower insisted on the waiver of penal interest and further sought for reduction in the rate of interest. During the

pendency of the Writ Petition, the Corporation carried out the auction proceedings in which the Auction Purchaser emerged as the sole bidder on 23.05.2013. On 28.05.2013 an interim order was passed by the High Court staying finalization of the auction proceedings pursuant to the notice dated 16.03.2013. However, liberty was granted to the Corporation to negotiate the bid offered by the Auction Purchaser. The Auction Purchaser whose bid was accepted, was directed to be impleaded as Respondent in the Writ Petition. The interim order of the High Court was extended from time to time, and on the basis of the statement made by the Borrower on 20.12.2017 that serious attempts were being made to clear outstanding loan, the High Court again granted time to the Borrower till 11.01.2018. As the Borrower could not utilize the opportunity to clear the loan, the interim order passed earlier was vacated by the High Court on 11.01.2018 with the observation that the Borrower is only buying time and is not serious in settlement of the dispute. The Appeal filed by the Borrower against the order dated 11.01.2018 was dismissed by the Division Bench of the High Court on 19.01.2018 with a liberty to move an application for early hearing of the Writ Petition.

5. The Writ Petition by which the auction notice dated 16.03.2013 was challenged was dismissed by a learned Single Judge of the High Court by a judgment dated 08.03.2018. While dismissing the Petition, the learned Single Judge was of the opinion that the scope of judicial review on contractual matters was very limited and as the Borrower did not avail of the opportunities that were given to it for clearing the outstanding loan amount even at the time of challenge to the legal notice dated 29.06.2005, it was not open to the Borrower to raise the same contention again.

6. Challenging the judgment of the learned Single Judge, the Borrower filed a Writ Appeal which was disposed of by the judgment dated 19.08.2019. The Division Bench of the High Court did not find any irregularity in the judgment of the learned Single Judge warranting interference insofar as the inability of the Borrower in not utilizing the chances given to him and in clearing the outstanding loan amount was concerned. Further, the Division Bench also recorded a finding that the Borrower was not serious in settling the dispute with the Corporation. However, the Division Bench while taking note of the fact that five years had elapsed after the bid of Auction Purchaser was accepted, concluded that the Corporation had mechanically confirmed the sale in favour of the Auction Purchaser without factoring in the escalation during the period of 5 years. On the said ground, the sale confirmed in favour of the Auction Purchaser was set aside and a direction was given to the Corporation to conduct the auction proceedings for the resort afresh. It is relevant to note that the Division Bench commented upon the conduct of the Corporation in not even seeking interest from the Auction Purchaser for the period 14.06.2013 to 15.01.2018.

7. Each of the Corporation, the Auction Purchaser and the Borrower has filed a Civil Appeal challenging the judgment of the High Court dated 19.08.2019. Further, the Auction Purchaser has also challenged the order dated 04.01.2020 by which the High Court had dismissed the review petition against the judgment dated 19.08.2019.

8. The contention of the Corporation is that the Auction Purchaser was the sole bidder who offered a sum of Rs. 8.21 crores on 23.05.2013. Pursuant to the negotiations between the

Corporation and the Auction Purchaser the bid was increased to 11.11 crores on 14.06.2013 and the finalization of the sale was kept pending in light of the interim order of the High Court dated 28.05.2013. Having found that the Borrower was a rank defaulter and enough opportunities had been given to the Borrower to clear the loan, the High Court committed an error in setting aside the sale certificate, and directing fresh auction to be conducted. The High Court ought to have accepted the sale of the resort in favour of the Auction Purchaser with a direction to the Auction Purchaser to pay interest at the rate 12% on the bid amount for the period between 14.06.2013 to 15.01.2018.

9. It was argued on behalf of the Auction Purchaser that the bid amount was enhanced pursuant to the negotiations and it had to wait for nearly five years from the date of conclusion of the negotiations to get the possession of the resort. Ultimately, the resort was handed over to the Auction Purchaser only on 27.02.2018. After making the entire payment, the Auction Purchaser has also spent huge amounts in renovating the resort. To start with, there was no bidder who came forward in the auction proceedings which took place March, 2013. Thereafter, the Auction Purchaser was the sole bidder. The High Court did not give any reason for setting aside the auction except that there was no consideration of escalation in the prices between 2013 to 2018. According to the Auction Purchaser, it was not liable to pay any interest amount for price escalations as it could not enjoy the property for the period between 14.06.2013 to 15.01.2018 as an interim order of the High Court was in operation.

10. The Borrower has also filed an Appeal aggrieved by the findings recorded by the High Court that he is a rank defaulter and no relief can be granted. According to the Borrower, the Corporation colluded with the Auction Purchaser and finalized the sale of the resort for a paltry amount. It was argued on behalf of the Borrower that there is evidence on record to show that the value of the resort was Rs. 17 crores in the year 2012. The learned counsel for the Borrower has further referred to the order of the High Court while dismissing the review petition filed by Auction Purchaser to submit that the ground of the auction sale being vitiated by fraud was taken by the Borrower before the High Court. However, the Writ Petition filed by the Borrower was dismissed on the ground that sufficient opportunities were given to the Borrower to clear the outstanding loan and as the Borrower could not avail the said opportunities to clear the loan, it was not entitled for any relief. The contention of fraud was not taken into consideration by the High Court while disposing of the Writ Petition.

11. The Division Bench upheld the said order and held that the Borrower was not entitled for any further indulgence by this Court. We are not inclined to accept the submission of the Borrower against this finding as sufficient opportunities have already been given to the Borrower and, therefore, he is not entitled to any further opportunity to bring a prospective buyer for the property. At the same time, we reject the submission made on behalf of the Auction Purchaser that it is not liable to pay anything more than the amount that was offered for the property on 14.06.2013. We are in agreement with the High Court that the Corporation failed in its duty in not taking into account the lapse of five years from the date of auction while handing over the possession of the property to the Auction Purchaser. The value of the property has undoubtedly increased during the said period.

12. The Division Bench of the High Court has set aside the confirmation of sale only on the ground that the Corporation has not taken into account the escalation of the prices in property between 14.06.2013 to 15.01.2018. Except this ground, there is no fault found with the auction proceedings and finalization of the sale in favour of the Auction Purchaser. Therefore, we are of the considered view that the sale in favour of the Auction Purchaser could not have been set aside by the Division Bench of the High Court on this ground alone. However, we are in agreement with the observation that the Corporation ought to have considered imposing interest on the bid amount from 2013 to 2018.

13. For the aforesaid facts and circumstances, we reverse the judgment of the High Court insofar as it set aside the confirmation of the sale and the auction proceedings in favour of the Auction Purchaser. However, we direct the Auction Purchaser to pay interest at the rate of 12% per annum on Rs. 11.11 crores for the period from 14.06.2013 to 15.01.2018. The Appeals are disposed of accordingly.

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