

OD-2 & 3

IN THE HIGH COURT AT CALCUTTA
Original Jurisdiction
ORIGINAL SIDE

IA NO. CA/93/2022
IN CP/233/2008

IN THE MATTER OF
M/S. DUNLOP INDIA LIMITED -
AND
M/S. E. V. MATHAI & SONS
AND

IA NO. CA/87/2022
IN CP/233/2008

IN THE MATTER OF
M/S. DUNLOP INDIA LIMITED -
AND
M/S. E. V. MATHAI & SONS

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 13th June, 2022.

Appearance:

Mr. Rupak Ghosh, Adv.
Mr. Anujit Mookherji, Adv.

Mr. Tilak Kr. Bose Sr. Adv.
Ms. Smita Das De, Adv.

Mr. Arindam Paul, Adv.

The Court: The applicant prays for setting aside and stay of an e-auction sale notice dated 21st February, 2022. The sale notice relates to Lots 1 and 2 of the assets in the factory units located at Sahagunj and at Ambattur of Dunlop

India Limited being the company (in liquidation). The applicant also prays for setting aside of a valuation report of the two factories at Sahagunj and Ambattur of the company (in liquidation) and for stay of operation of a fresh e-auction notice dated 9th May, 2022. The fresh notice, pursuant to orders of Court, relates to the assets at the Sahagunj factory of the company (in liquidation).

The applicant is one Miller Traders Private Limited, an unsecured creditor of the company (in liquidation) to the extent of Rs. 23 lacs. The applicant is aggrieved by the alleged depreciated value of the assets at Sahagunj and Ambattur factories as reflected in the e-auction notice dated 21st February, 2022 for sale of such properties. The applicant seeks the reasons for such devaluation and submits that the Official Liquidator has the duty to explain the drastic depreciation in the value of assets from 418 crores in 2014 to 13.21 crores in 2022. The applicant relies on an order passed by this Court on 8th April, 2022 in CA 87 of 2022 by which the Official Liquidator was directed to file an affidavit explaining the possible reasons for the depreciated value of the properties and was directed to bring an inventory of the properties on record.

The present status of sale of assets in Lot 1 and Lot 2 of the Sahagunj and Ambattur factories

The sale of assets was initiated by the e-auction sale notice of 21st February, 2022. By the order dated 8th April, 2022, the valuation reports of the plants and machineries of the factories of the company (in liquidation) at Sahagunj and Ambattur were considered and the Official Liquidator was directed

to explain the reasons of the devaluation of such properties, as reflected in the e-auction notice, with the assistance of an empanelled valuer. On 4th May, 2022 in an application by one Texworth International (CA 89 of 2022) for restraining the Official Liquidator from treating the last bid submitted by Texworth as the intended bid for Lot 1 of the property was taken up for consideration. The e-auction in relation to Lot 1 pursuant to the notice dated 21st February, 2022 was cancelled for the reasons recorded in the order and Texworth was directed to comply with several measures for ensuring price-protection safeguards for sale of the assets of the company (in liquidation) with regard to Lot 1 (Sahagunj).

On 20th May, 2022, the status of the sale of Lots 1 and 2 was considered by this Court in the application filed by Miller Traders and it was noted that Miller Traders/present applicant had preferred an appeal from the order dated 4th May, 2022 by which a fresh e-auction was directed to be conducted for sale of Lot 1 properties and Texworth International was directed to compensate for the cancellation of the e-auction conducted on 10th-11th March, 2022.

The present status of the sale of Lot 1 and Lot 2 is this; the sale of Lot 1 has already taken place on 23rd-24th May, 2022 pursuant to the order passed by this Court on 4th May, 2022.

The sale of Lot 2 has also taken place on 10th-11th March, 2022, pursuant to an order passed by this Court and is subject to the confirmation of the sale with the three highest bids retained by the Court in sealed covers. The only step remaining for confirmation of the sale is a formal application from the Official Liquidator. Thus, the e-auction sale notices of 21st February, 2022 and 9th May, 2022 have both been given effect to and the properties of Lot 1 and Lot 2 have

been auctioned. The applicant has approached this Court to upend the e-auctions in their entirety, i.e., in respect of both Lot 1 and Lot 2.

The case made out by the Official Liquidator and the report of the Receiver

The affidavit filed by the Official Liquidator traces the orders passed in the winding up proceedings of the company (in liquidation) culminating in the Official Liquidator taking possession of the registered office of the company (in liquidation) and an order passed by the Supreme Court on 26th February, 2013 directing status quo till disposal of the Special Leave Petition. The affidavit also refers to an order of the Supreme Court dated 12th June, 2013 restraining the petitioning creditor from disposing of the properties of the company (in liquidation). The Supreme Court thereafter vacated all interim orders on 29th July, 2016. The affidavit further states that the Official Liquidator took possession of the assets of the company (in liquidation) at its unit at Sahagunj on 8th May, 2017 with the help of the police. The minutes recording such possession were prepared on the spot on 08.5.2017 and record that “.....*most of the plant and machinery had been either removed or broken/damaged condition*”. The Official Liquidator also took over the assets at Ambattur on 15th May, 2017 in the presence of the Tamil Nadu Police and others as recorded in the minutes dated 15.5.2017. The affidavit states that the Official Liquidator appointed M/s ITCOT Consultancy and Services as the valuer to assess the valuation of the assets of Ambattur and Mr. P.K. Mitra as the valuer for the Sahagunj unit. Both the valuers submitted the respective valuation reports with the Registrar of this Court. The relevant recording of the valuer for the Sahagunj unit is as follows:

“It is clear from our above site observations that in the entire factory no plant/equipment/machinery is in a working condition, everything is beyond repair or renovation. Moreover these have become totally obsolete. Whatever damaged/broken/corroded machineries/parts still present can only be termed as scrap. Many valuable machines have been taken away.”

“At present it is observed that there had been rampant removal of high value machineries, theft etc until take over by the Official Liquidator (OL) i.e. for around continuous 5 (five) years (between April 2012 & April 2017). From the time OL has taken over, the condition is remaining stable. This is confirmed by local people as well. Meanwhile items remaining in the plant lying idle for a long period without any maintenance at all have gradually turned into complete scrap. Hence only scrap value can be expected. Scrap value is the estimated amount that could be realized for an asset if it were sold for its material contents, not for productive use.”

As regards the Ambattur properties, the valuer has this to say; that most of the machinery which remains are in a skeletal condition without any internal parts. The valuer’s report, annexed to the affidavit also depicts the ransacked condition of the plant and machineries.

The facts which emerge from the affidavit and the valuers’ reports with regard to the Sahagunj and Ambattur factories is that most of the plants and machineries were stolen and removed and the remaining assets were found to be in a damaged and valueless condition.

Orders passed by the Supreme Court and the Calcutta High Court on the fact of possession of the assets

The order of the Supreme Court on 12th June, 2013 restraining the petitioning creditor from creating any third party right was passed in an application filed by the company (in liquidation) without making the Official Liquidator party to the proceedings. The Official Liquidator was impleaded as a

party respondent later, as reflected by the second order of the Supreme Court dated 11th July, 2013.

The Division Bench by its order dated 8th May, 2017 in an appeal filed by SMIFS Capital, berated the Official Liquidator for not taking possession of the assets of the company (in liquidation) till May, 2017. The Court took note of

“the conduct of the predators who masqueraded as promoters of the company prior to its liquidation. Workers have not been paid for months and years. Finished goods may have been removed together with valuable plant and machinery. Several instances of fire were also reported at the principal manufacturing facility of the company (in liquidation)”.

The order makes several references to the fact that the Official Liquidator neglected to take charge of the assets and properties till 8th May, 2017. The Division Bench passed another order on 19th July, 2017 recording that the Official Liquidator has filed reports indicating that the assets at Sahagunj and Ambattur manufacturing facilities of the company (in liquidation) have “now” been taken possession of.

A learned Single Judge thereafter passed an order on 1st August, 2019 accepting the two valuation reports produced in Court for the Sahagunj and Ambattur factories.

The undeniable facts which emerge from the above orders is that the Official Liquidator took possession of the assets of Sahagunj and Ambattur only after 8th May, 2017. The orders passed by the Division Bench on 8th May, 2017 and 19th July, 2017 are evidence of these facts. Hence, the Official Liquidator cannot be held accountable for the depreciation of the value of the properties from the 2014/2015 till May, 2017. Further, the reports of the valuers state that the plants and machineries were already in a highly devalued and damaged

condition and could only be categorised as scrap. In any event, five years have passed since the Official Liquidator took charge of these assets; plants and machineries cannot be expected to withstand the ravages of time and natural calamities through the intervening years. The Division Bench also noted in the order dated 8th May, 2017 that there were instances of fire in the facilities. Technology has also undergone rapid transformation and may have contributed to the further devaluation of the properties. Most significantly, the fact of a free-for-all of interested parties leading to rampant destruction of the assets till May, 2017 is corroborated by both the orders of the Division Bench and the reports of the valuers.

Why the applications should be rejected at the very outset

The first attempt for sale of the assets located at Sahagunj and Ambattur was made by a learned Single Judge by orders dated 13th March, 2020 and 8th January, 2021. The Official Liquidator was directed to publish the sale notices and the sale was fixed on 19th February, 2021. The date of sale was thereafter extended and fixed on 5th March, 2021. A further order was passed on 9th July, 2021 on an application made by the Official Liquidator for setting aside the e-auction held on 5th March, 2021 on the ground of certain technical glitches. The e-auction was thereafter directed to be held within a month from 11th February, 2022.

The sequence of events thereafter and till date has been stated above under the heading- The status of sale of assets in Lot 1 and Lot 2 of the Sahagunj and Ambattur factories.

The orders would show that the e-auction notices of 21st February, 2022 and 9th May, 2022 for sale of the properties in Lot 1 and Lot 2 were given effect to after several orders made in applications made by interested parties.

The applicant is an unsecured creditor whose claim is of approximately Rs. 23 lacs. The conduct of the applicant is clearly suspect. The applicant first filed CA 87 of 2022 for Lots 1 and 2. The order dated 20th May, 2022 records that the sale of Lot 1 is due to take place on 23rd/24th May, 2022 (which has now already taken place) and that the sale for Lot 2 has also taken place but remains subject to confirmation of the sale of the three highest bids received by the Court. The applicant, for some unknown reason, challenged an order passed by this Court dated 4th May, 2022 in respect of Lot 1. The 4th May, 2022 order set aside the e-auction held on 10th/11th March, 2022 in respect of Lot 1 property. The Division Bench however by its order dated 20th May, 2022 refused to stay the auction for Lot 1 which was scheduled to be held on 23rd/24th May, 2022.

The applicant thereafter filed a second application - CA 93 of 2022 - for staying the operation of the fresh e-auction notice of 9th May, 2022 pursuant to the order passed by this Court on 4th May, 2022.

Even if the submission made on behalf of the Official Liquidator that an online search would reveal more than 39,000 records showing a link between the applicant and the group companies of the company (in liquidation) is discounted, the conduct of the applicant is desperate to say the least. The applicant, without a claim to support its acts, has thrown a spanner at every attempt made for sale of the properties of the company (in liquidation) at Sahagunj and Ambattur. The ground taken in the second application (CA 93 of 2022) of the Official Liquidator

not being able to explain the reasons for depreciation of the assets is feeble, dubious and should be rejected outright. As stated above, the record show that the Official Liquidator could not have any knowledge or any role to play at the material point of time, i.e. 2014-2017 when the assets were lying unprotected and at the mercy of parties whose sole intention was to strip the company (in liquidation) of any value and frustrate the claims of its workers and creditors.

The irrefutable conclusion is that the applicant does not want closure or any constructive resolution of the matter but seeks to keep the claims of the creditors and workers uncertain and in a limbo for all times to come. If a reference can be drawn to the meat of the matter – the conduct of the applicant is simply not kosher. This Court is therefore of the view that the applicant should be subjected to pay costs of Rs. 2,00,000/- to the welfare fund of the workers of the company (in liquidation). The said amount shall be paid to the Official Liquidator for being kept in a separate interest-bearing account for the benefit of the workers of the company (in liquidation). The Official Liquidator shall informally apprise the Court after a fortnight as to the manner in which the funds can be utilised for the purpose directed. CA 87 of 2022 and CA 93 of 2022 are dismissed. Interim orders, if any, passed in aid of these applications, are vacated.

(MOUSHUMI BHATTACHARYA, J.)