

Dispute Resolution Hotline

March 13, 2009

BACK TO THE FUTURE: PROPERTY PURCHASER EXEMPTED FROM PAST LIABILITIES

The Hon'ble Supreme Court of India ("Court") has, by its order dated February 19, 2009¹, held that a municipal corporation is not entitled to recover its arrears of property tax levied on a property belonging to a company under liquidation, from the purchaser of the property. The municipal corporation would be treated as an unsecured creditor of the Company and would therefore need to stand in queue for its recovery of its dues from the Company, as part of the distribution of assets by the Official Liquidator, as per the provisions of Sections 529 and 530 of the Companies Act, 1956.

BRIEF FACTS:

Wool-Combers of India Ltd. ("Company") went into liquidation and was to be wound up. The Official Liquidator took charge of its movable and immovable assets. As part of the sale of assets by the official liquidator, Al Champdany Industries Limited ("Appellant") purchased the assets of the Company. The sale was confirmed by the Learned Company Judge on September 15, 2006.

Thereafter, Bhatpara Municipality ("Municipality") served notice (dated February 15, 2007) upon the Appellant claiming payment of arrears of property tax for the period from 1991-1992 to 2006-2007 along with statutory interest thereon.

The Appellant took out chamber summons before the Learned Single Judge praying for *inter alia* a clarification that the sale confirmed in favour of the Appellant would make the Appellant liable for payment of property tax only on and after the date of confirmation of sale. This chamber summons was dismissed by the court. In the order, the Learned Single Judge stated that the terms and conditions of the sale specified that the sale was made on an "as is where is basis and whatever there is basis" and terms and conditions thereof also called upon the bidders to satisfy themselves regarding the title and encumbrance attached to the asset. The Learned Single Judge stated that whilst "as is where is basis and whatever there is basis" signifies the condition, quality and quantity in which the asset sold exists and therefore, would not take into account the liabilities attached to the asset sold, the second condition, as to the bidders satisfying themselves about the title and encumbrance, would include the liability attached to the asset including the tax payable. An intra-court appeal to the division bench of the said court was also dismissed.

The Appellant thereafter approached the Court.

JUDGMENT:

The Court observed that even though the fact that the Company had gone into liquidation was given due publicity, the Municipality did not file its claim before the Official Liquidator (to get the same recovered from the sale proceeds). The Court also observed that indisputably, the manner in which the claims of a creditor in respect of the dues of a company in liquidation were to be realized have been laid down in Sections 529, 529A and 530 of the Companies Act. The Court stated that dues in relation to municipal tax did not create an encumbrance and/or charge upon the property and were a personal liability.

Stating that the terms and conditions of sale must be read as a whole and given a purposive meaning, the Court, whilst holding that an encumbrance must be a charge upon the property, which ran with the property, held that the Municipality was in fact, an unsecured creditor and was required to stand in queue with all other unsecured creditors for realization of their dues from the sale proceeds and that the Companies Act or any other law in force did not impose any additional obligation upon the purchaser to make enquiry with regard to the liabilities of the company other than those which would impede its value.

The Court further proceeded to hold that as it was settled law (under Section 55 of the Transfer of Property Act) that unless there was a contract to the contrary, the seller was bound to pay all public charges due in respect of a property up to the date of sale, when the property was sold in an auction and that the advertisement did not specify that all public charges would need to be paid.

Further, it was held that the Municipality was not a preferential creditor and winding up proceedings under the Companies Act are a special law and provisions of Sections 529 and 530 would need to be complied with whilst distributing the assets between the creditors and unsecured creditors.

ANALYSIS & IMPLICATIONS:

This judgment will be of great relief and comfort to the purchasers of assets in liquidation proceedings and will speed up the process of winding up which is, at present, a lengthy and cumbersome process. More particularly, this judgment will clear the ambiguities *viz-a-viz* the valuation of a property insofar as such liabilities are concerned. Significantly, this judgment categorically spells out that the correct remedy for the Municipality in such a scenario is to approach the Official Liquidator.

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1. Civil Appeal No. 1118 of 2009 arising out of SLP (C) No. 15285 of 2008.

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