

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I.A. Nos.28-30, 84-86, 87-88, 89-91, 92-94
AND
I.A.Nos.1-42 & 60-65 in I.A.Nos.84-86

IN
SPECIAL LEAVE PETITION(C)Nos.8398-8399 of 2005

SUPER BAZAR KARAMCHARI DALIT SANGH & ORS.PETITIONERS

VERSUS

UNION OF INDIA & ORS.RESPONDENTS

WITH

CONMT.PET.(C) Nos.178-180/2012 In SLP(C) Nos.8398-8399/2005
CONMT.PET.(C) Nos.304-306/2012 In SLP(C) Nos.8398-8399/2005
I.A.Nos.1365-1367/2013, I.A.Nos.1-3/2013, I.A.Nos.4-6/2015 In
CONMT.PET.(C) Nos.391-393/2012 In SLP(C) Nos.8398-8399/2005
CONMT.PET.(C) Nos.455-457/2012 In SLP(C) Nos.8398-8399/2005
SLP(C) No.38253/2012

O R D E R

Having heard learned counsel for the rival parties, it emerges, that in the bid which was submitted by M/s Writers and Publishers Ltd, the infusion of funds stipulated, was to the tune of Rs.504 crores. The break up thereof, for the revival of Super Bazar, was roughly as under:

Share Capital	-	Rs.102 crore
Working Capital	-	Rs 276 crore
Revival and Revamping	-	Rs 126 crore

Admittedly, the infusion of funds by the bidder was for the revival of the Super Bazar, and there was no stipulation for refund, in

case of withdrawal of the bidder from the revival process. The report of the Evaluation Committee for evaluation of the bids, was accepted by this Court vide an order dated 26.02.2009, which *inter-alia* directed as under:-

"We accept the evaluation committee report in its entirety. Before concluding we may state that three trade unions Super Bazar Karamchari Dalit Sangh, Delhi Shop and Establishment Employee Union and Super Bazar Karachari Hitaishi Sangathan and all other parties have also gone through the report. They have no objection to the recommendations of the evaluation of the evaluation committee. They concurred with the views expressed by the evaluation committee.

Accordingly, we direct that our order passed today be placed before the official liquidator and the Central Registrar Multi-State Cooperative Society who will take steps to revive Super Bazar in terms of the order passed by this court from time to time."

During the course of hearing it was pointed out, that till date the bidder had not submitted any revival plan before the Central Registrar, in spite of the Central Registrar having given directions in this regard from time to time. Even after the lapse of 7 years, Super Bazar has not been revived. It was also submitted, that the Government was under no obligation to return the funds, that the bidder claims to have invested, in the so called process of revival. It was also urged by the rival parties, that in case the bidder wished to withdraw from the revival process, the Super Bazar Society should be placed under liquidation, and the Official Liquidator should be allowed to take action in accordance with the provisions of the Multi State

Co-operative Societies Act, 2002. Under section 90 of the said Act, the claims/payable amount has to be investigated by the Official Liquidator, and the claims are to be settled from the asset value of the Society, according to their respective priorities. It was submitted, that the Government was also a creditor, and is entitled to get repayment of the loan amount of Rs 68.51 crores, with interest thereon, as the society had not been revived. It was further asserted, that the terms and conditions of the bid specified, that all shops, land and buildings would be utilised by the new management for revival on "as is where is basis". This, it was pointed out, was part of the recommendations of the evaluation committee, which were accepted by this Court, and also by the bidder. Further, regarding property of the Super Bazar Society, this Court vide orders dated 13.08.2010 & 07.01.2014 had directed as under:-

"The subject premises will not be encumbered and no third party rights will be created in this respect thereof till further orders of this Court".

"Respondents in CP No 178-180/1012 shall not make any alienation of the property."

Despite earnest efforts made by this Court ever since the acceptance of the bid of M/s Writers and Publishers Ltd., and despite a series of hearings in the matter ever since 2009, it came to be realised, that it would not be possible to give effect to the terms of revival. It is in the above view of the matter, that this Court sought suggestions from the rival parties, how the arrangement could be terminated. It is in the above background,

that the following motion bench order came to be passed on 23.02.2016:

"The bidder has suggested two alternative courses of action in a written note handed over to us in Court today. The above note is taken on record and marked as Annexure-A. Mr.P.S.Narsimha, learned Additional Solicitor General representing the Union of India seeks a short adjournment so as to enable him to obtain instructions in the matter. All other parties may likewise obtain instructions in the matter before the next date of hearing.

Post for hearing on 01.03.2016."

On the issue, as to how and under what terms and conditions M/s Writers and Publishers Ltd., could be released from the arrangement, the parties (consequent upon mutual negotiations), submitted a joint statement of the Government of India and the bidder - M/s Writers and Publishers Ltd., dated 03.03.2016. It seems that on re-consideration, there was a change of heart, at the hands of Government of India, which then submitted a revised joint statement dated 05.03.2016.

Learned counsel for the rival parties have assisted this Court, on the manner in which M/s Writers and Publishers Ltd., should be released from the obligation of the instant arrangement. Having heard learned counsel, we are satisfied in recording, that M/s Writers and Publishers Ltd. should be refunded the entire investment made by them, along with interest at the rate of 6% per annum (though it was suggested, that the rate of interest could be at 9% per annum), subject to deduction of profits made during the period when the arrangement subsisted.

In order to effectuate the refund referred to hereinabove

(to M/s Writers and Publishers Ltd.), we consider it just and appropriate to direct the Comptroller and Auditor General of India, to nominate an Auditor, to verify the income and expenditure incurred by M/s Writers and Publishers Ltd., and also, the profits earned by it from the Super Bazar establishment, during the period under consideration. The determination so made by the Auditor, will be verified by the office of the Comptroller and Auditor General of India, whereupon, the same shall be binding on all the parties including M/s Writers and Publishers Ltd. Needless to mention, that all interested parties shall have the liberty to appear before the nominated Auditor, and canvass their respective claims.

We hereby also direct, that M/s Writers and Publishers Ltd., will forthwith handover (within two weeks) against inventory and receipt, all concerned documents and actual physical possession of all movable and immovable properties of the Super Bazar, to the Official Liquidator.

We further direct the Official Liquidator to appoint a chartered valuer, to assess the current value of the properties having clear title. The Official Liquidator will bring to sale, all the properties of the Super Bazar, and the proceeds thereof shall be deposited in an escrow account, which shall be maintained in a nationalised bank. The above exercise shall be carried out preferably within a period of six months, but definitely within an outer limit of nine months.

M/s Writers and Publishers Ltd. will be entitled to, on the filing of an appropriate application, withdrawal of Rs.14.84 crores (along with interest accrued thereon), which was deposited

by it in the Registry of this Court. Likewise, M/s Writers and Publishers Ltd. will also be entitled to a refund of Rs.8.07 crores (along with interest accrued thereon), which was deposited by it, with the Regional Commissioner, Employees' Provident Fund Organization, Wazirpur, Delhi, on the filing of an appropriate application. The above amounts payable to M/s Writers and Publishers Ltd., shall be deducted from the principal amount payable to it, while refunding the payments due.

Only after discharging the entire liability in favour of M/s Writers and Publishers Ltd., the Official Liquidator shall proceed with the liquidation of the assets of Super Bazar in accordance with law, and in consonance with the impugned order dated 19.12.2003.

All the interlocutory applications/contempt petitions/special leave petition stand disposed of in the above terms.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(C.NAGAPPAN)

NEW DELHI;
MARCH 29, 2016.

Mr.K.Radhakrishnan, Sr.Adv.
Mr.W.A.Qadri, Adv.
Mr.Gaurav Sharma, Adv.
Ms.Sunita Sharma, Adv.
Ms.Rekha Pandey, Adv.
Mr.S.S.Rawat, Adv.
Mr.Neeraj Kumar Sharma, Adv.
Mr.Avinash Sharma, Adv.
Mr.Meenesh Kr.Dubey, Adv.
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Ms. Sushma Suri, Adv. (NP)

Mr. D. S. Mahra, Adv. (NP)

Ms. Kaveeta Wadia, Adv.

Mr. C.D. Singh, Adv.
Ms.Sylona Mohapatra, Adv.

Mr. Ravindra Kumar, Adv.

Mr. Surya Kant, Adv.

Mr. V.K. Verma, Adv.

Mr. Arvind Kumar Gupta, Adv.

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Mr. D.N. Goburdhan, Adv.

Dr. Kailash Chand, Adv.

Mr. P. Narasimhan, Adv.

Mr. K.R. Sasiprabhu, Adv.

Ms. Jyoti Mendiratta, Adv.

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Ms. Aruna Gupta, Adv.

Ms. S Janani, Adv.
Ms.Renuka Arora, Adv.
Mr.Sunando Raha, Adv.

Mr. Prashant Bhushan, Adv.
Mr.Omanakuttan, Adv.

Ms.Shilpa Singh, Adv.

Ms.Ranjeeta Rohatgi, Adv.
Ms.Samten Doma, Adv.

Mr.Bimal Roy Jad, Adv.

Dr.Sushil Kumar Balwada, Adv.

Ms.Rachana Srivastava, Adv.

Upon hearing the counsel the Court made the following
O R D E R

All the interlocutory applications/contempt
petitions/special leave petition stand disposed of in terms of the
signed order.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RENUKA SADANA)
COURT MASTER

(Signed order is placed on the file)