

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).23995/2010

(From the judgement and order dated 30/07/2010 in WP No. 2136/2009
of The HIGH COURT OF BOMBAY)

K.K.MODI Petitioner(s)

VERSUS

OM COMMODEAL P.LTD.& ORS. Respondent(s)

(With prayer for interim relief)

WITH

SLP(C) NO.26005/2010

(With appln.(s) for exemption from filing c/c of the impugned
judgment and with prayer for interim relief and office report)

Date: 10/09/2010 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. H.N. Salve, Sr. Adv.
Mr. Mukul Rohtagi, Sr Adv.
Mr. Pravin Bahadur, Adv.
Ms. Kanika Gomber, Adv.
Ms. Mallika Joshi, Adv.
Mr. Amit Agarwal, Adv.
Mr. Rajan Narain, Adv.

For Respondent(s) Mr. P.S. Patwalia, Sr. Adv.
Mr. Gagan Gupta, Adv.
Ms. Jayashree Shukla, Adv.
Ms. Purti Marwah, Adv.
Mr. R.S. Poliwai, Adv.
Mr. Apoorva, Adv.
Mr. Mayank G., Adv.

Mr. Parmanand Gaur, Adv.

Mr. K. Ramamoorthy, Sr. Adv.
Mr. C. Paramshivam, Adv.
Mr. M.P. Parthiban, Adv.
Mr. Rakesh K. Sharma, Adv.

Ms. Shirin Khajuria, Adv.

UPON hearing counsel the Court made the following

O R D E R

.....2.

SLP(C) No.26005 of 2010

Leave granted. Heard the parties.

In terms of the signed order, we allow this appeal
and set aside the interim order of the High Court and

request the High Court to hear and dispose of the writ petition expeditiously. It is open to the LIC to approach the High Court for sale of its shares by open auction in court or otherwise.

SLP(C) No.23995/2010

In view of the order in SLP(C) No.26005/2010, this special leave petition is dismissed as having become infructuous.

(Ravi P. Verma) (M.S. Negi)
Court Master Court Master
[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8010 OF 2010
[Arising out of SLP(C) No.26005/2010]

CHAIRMAN, LIC OF INDIA

.....APPELLANT

Versus

OM COMMODEAL & ORS.

.....RESPONDENTS

WITH SLP(C) No.23995/2010

O R D E R

Leave granted. Heard the parties.

2. The first respondent filed a writ petition seeking a direction to the appellant to transfer in its favour 650,000 equity shares held by the appellant in the second respondent company, with a further direction to complete the sale in favour of first respondent in all respects. It also sought a direction to restrain the appellant from transferring the shares in favour of anyone else and certain other reliefs. In short, the writ petition was virtually for specific performance of an alleged contract for sale of shares and consequential permanent injunction.

3. The High Court, while issuing rule in the said writ petition, has issued an interim order with the following directions, by the impugned order dated 30.7.2010:
(i) The first respondent shall deposit with the LIC, the

price of 650,000 equity shares held by the LIC worked out at the rate of Rs.45/- per share, without prejudice to its rights and contentions.

(ii) LIC shall accept the said amount without prejudice to its rights and contentions and subject to the result of the writ petition.

(iii) On receiving the price at the rate of Rs.45/- per share, LIC shall hand over the 650,000 shares in second respondent company, that it had agreed to sell to the first respondent alongwith duly signed transfer forms and shares of any other company that it may have received in lieu of those shares.

(iv) The first respondent will hold the shares delivered by LIC subject to the final decision in the writ petition and will not transfer those shares in any manner without the leave of the court.

4. The said order is challenged by LIC contending that the said interim order virtually allows the writ petition, that the order assumes erroneously the existence of a concluded contract for sale which is seriously under dispute and that the order grants specific performance of an alleged contract for sale of movables at an interim stage without hearing. LIC also pointed out that the High Court ignored the fact that LIC had made it clear in its advertisement regarding proposed sale of shares that it reserved the right to terminate or withdraw the transaction at any point of time at its sole discretion. It is submitted by LIC that it was duty bound to secure the best price in regard to its shares, in public interest and it cannot be compelled to sell the shares at a lesser price. Several other contentions were also urged.

5. Learned counsel for the third respondent submitted that the third respondent was willing to offer a price of Rs.100/- per share for the shares held by LIC and stated that the third respondent was also willing for an open auction before the High Court in regard to the shares. Learned counsel for the fourth respondent submitted that any offer made by the third respondent should be treated as a joint offer on behalf of third and fourth respondents.

6. In the background of these submissions, the learned counsel for the first respondent (writ petitioner before the High Court) submitted that this Court, instead of deciding any of the issues at the interlocutory stage, may set aside the interim order of the High Court with a direction to dispose of the writ petition itself expeditiously.

7. On the facts and circumstances, we are of the view that LIC could not have been tied down in the manner it was done by the interim order, in a writ proceedings relating to enforcement of an alleged contract for sale of shares. A writ petition is not obviously a suit for specific performance.

8. We, therefore, allow this appeal and set aside the interim order of the High Court and request the High Court to hear and dispose of the writ petition expeditiously. It is open to the LIC to approach the High Court for sale of its shares by open auction in court or otherwise.

SLP(C) No.23995/2010

In view of the above order, this special leave petition is dismissed as having become infructuous.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
September 10, 2010.

.....J.
(H.L. GOKHALE)