

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.112 OF 2010
WITH
CROSS OBJECTION NO.8 OF 2010

Europlast India Ltd.		Appellant
V/s.		
Gorakhanath Electricals Pvt. Ltd. & Ors.		Respondents

ALONG WITH
APPEAL NO.148 OF 2010

Anant Narayan		Appellant
V/s.		
A.P. Kothari		Respondent

AND
APPEAL NO.179 OF 2010

Ashoka Buildcon Ltd., Nashik		Appellant
V/s.		
Europlast India Ltd. & Ors.		Respondents

Mr. Pankaj Shah for the Appellant in Appeal No.112 of 2010 and for the Respondent No.1 in Appeal No.179 of 2010 and in Appeal No.148 of 2010.

Mr. Saurabh Oka for the Appellant in Appeal No.179 of 2010 and for Respondent No.8 in Appeal No.112 of 2010.

Mr. Anant Narayan, the Appellant in Appeal No.148 of 2010, is present in person.

Mr. Virag Tulzapurkar, Sr. Counsel, a/w. Ms. Sowmya Srikrishna, Mr. Anun Siwach and Mr. Jay S., i/by M/s. Cyril Amarchand Mangaldas, for

Respondent No.2 in Appeal No.112 of 2010, Appeal No.179 of 2010, Cross Objection No.8 of 2010 in Appeal No.112 of 2010 and Cross Objection No.9 of 2010 in Appeal No.179 of 2010.

Mr. Denzil D'Mello for Respondent Nos.5 to 7 in Appeal No.112 of 2010.

Mr. R.S. Apte, Sr. Counsel, a/w. Mr. A.A. Garge, for Respondent No.3 in Appeal No.112 of 2010 and for Respondent No.4 in Appeal No.179 of 2010.

Mr. A.P. Kothari, Ex-Dy. Official Assignee and Respondent in Appeal No.148 of 2010 and Respondent No.4 in Appeal No.112 of 2010, is present in person.

Mr. N.D. Desai, the Intervenor/Applicant, is present in person.

**CORAM : V.M. KANADE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 28TH AUGUST, 2015.

P.C. :

1. Heard learned counsel for the parties.
2. Parties have settled the dispute and filed Consent Minutes of Order.
The Consent Minutes of Order are signed by all the parties and their respective Advocates.

3. In the said Consent Minutes of Order, Respondent No.2 in Appeal Nos.112 of 2010 and 179 of 2010 has undertaken to deposit in this Court a sum of Rs.1,27,22,761/-, which sum includes the principal as well as interest @ 4% p.a. from 1st December, 2001 to 31st August, 2015, in full and final settlement of the claims of M/s. Keva Construction Pvt. Ltd., who is the Appellant in Appeal No.179 of 2010 and Respondent No.8 in Appeal No.112 of 2010.

4. They have also undertaken to deposit Rs.5,96,89,352/-, which includes the principal sum along with interest @ 4% p.a. from 1st April, 2000 to 31st August, 2015, in full and final settlement of the claims of the creditors, who were the fixed deposit holders and liquinote holders, as defined in the Scheme sanctioned by this Court by its order dated 18th July, 2001 in Company Petition No.327 of 2001.

5. These amounts shall be deposited in this Court on or before 30th September, 2015. It is agreed by and between the parties that upon the Appellant depositing the cheque amount mentioned in clause (1) of the Consent Minutes of Order, the impugned order dated 7th January, 2010 would be quashed and set aside and the title of M/s. S.H. Kelkar & Company Limited, sold under the Deed of Conveyance dated 26th April,

2007, would stand confirmed as valid, binding and subsisting and the Appellant would stand fully discharged of all its obligations.

6. It is further agreed that the Prothonotary and Senior Master, High Court, Bombay shall disburse the amount, which would be deposited, to M/s. Keva Construction Pvt. Ltd. and to the unsecured creditors in accordance with their respective entitlements. Before making the said payment, the Prothonotary and Senior Master, High Court, Bombay shall verify their claims and thereafter disburse the said amounts.

7. It is further agreed that M/s. Europlast India Ltd., the Appellant in Appeal No.112 of 2010 and Respondent No.1 in Appeal No.179 of 2010 and Appeal No.148 of 2010, states, declares and confirms that there is no attachment, injunction, encumbrance, impediment or fetter of any nature in respect of the property mentioned in the Deed of Conveyance dated 26th April, 2007 entered between Gorakhanath Electricals Pvt. Ltd. and M/s. S.H. Kelkar and Co. Ltd.

8. The aforesaid statements and undertakings are accepted.

9. Brief facts, which are relevant, before the Consent Minutes of Order

are to be accepted, will have to be mentioned, since we are setting aside the impugned order passed by the learned Single Judge.

10. Appellant M/s. Europlast India Ltd. has filed an application under Section 391 of the Companies Act. Thereafter, sometime in the year 2000, the Appellant Company was de-listed from the Bombay Stock Exchange and seized to have any business activity. The said application was disposed of on 18th July, 2001, after the Scheme was sanctioned.

11. After the Scheme was sanctioned, one of the creditors of the Appellant, namely, M/s. Ashoka Buildcon Ltd. filed arbitration proceedings, which were allowed in favour of M/s. Ashoka Buildcon Ltd.

12. The property of the Appellant M/s. Europlast was attached by the executing Court on 4th August, 2003 and directions were given to sell the property. The Appellant M/s. Europlast filed Company Application No.673 of 2003 for staying the auction sale to be held on 28th March, 2003. One more creditor also filed Company Application bearing No.75 of 2002 for staying the auction sale. An another application was filed by the Appellant M/s. Europlast seeking modification of the Scheme of compromise and seeking further time for the disposal of the said land at Khopoli and, in the

alternative, to appoint a committee of unsecured creditors of the Appellant under the supervision of this Court, or, in the alternative, to appoint a person to dispose of the assets of the Appellant Company.

13. This Court has disposed of three applications by a common order dated 12th February, 2004, thereby directing that a committee shall be appointed to facilitate the sale of the immovable assets, which shall be completed within twelve weeks. The Company Registrar was appointed as a 'Chairman' of the said committee.

14. According to the Appellant, the new Management and the new Directors, who were appointed, were not aware of these directions, which were given by this Court on 12th February, 2004 and they, therefore, sold the property by private auction. One Gorakhnath Electricals Private Limited, on 29th November, 2006, offered a sum of Rs.75,00,000/- and settled the claims of the creditors of the Appellant to the extent of Rs.70,53,000/-.

15. The committee, which was appointed by this Court, when came to know about the sale of the property, presented a report before the Company Judge on 31st March, 2008, praying for a direction to implement

order dated 12th February, 2004. All the applications filed by the parties were heard by the Company Court. Several orders were passed by the Company Court from time to time and finally, on 7th January, 2010, the learned Single Judge by an order dated 7th January, 2010, passed a common order in all the pending applications and set aside the same in favour of Gorakhnath as well as in favour of M/s. S.H. Kelkar and Company Limited and directed the committee to dispose of the application and further directed that the amounts of Rs.77,00,000/- and Rs.3,55,00,000/- should be brought back with interest @ 18% p.a. and deposit the same in this Court within four weeks. A direction was also given to take steps to initiate criminal action against the erring persons in view of the observations made in the decision and further direction was given for placing the matter before the Registrar General of this Court to initiate appropriate action against the then Company Registrar in view of the observations made in paragraph No.38. All the Appeals have been filed against this order passed by the learned Single Judge.

16. During the pendency of the Petition, parties have arrived at a settlement and have filed Consent Minutes of Order. M/s. S.H. Kelkar and Company Limited have agreed to repay the amount, which is due and payable, to M/s. Ashoka Buildcon Ltd. and all the depositors. It is an

admitted position that the investors have not received their money for a considerably long time, for almost 15 years. These investors are small time investors, who have invested their lifetime savings in the company deposits and liquinotes. The Appeals which have been filed against the impugned order are pending since 2010. Proceedings also have been initiated against the Accused and the said proceedings are also pending in the M.P.I.D. Court. No relief has been granted by the M.P.I.D. Court also, to the small time investors and depositors, who are now senior citizens and are awaiting the returns of the deposits, which they have made. The learned counsel appearing on behalf of the Appellant M/s. Europlast has urged that there was no fraudulent intention in selling the property, since the new Directors were not aware of the impugned order. It is, therefore, submitted that the observations made by the learned Single Judge are not correct and it is submitted that the intention of the Appellant M/s. Europlast and its Directors was to ensure that some amount is to be paid to the depositors at the earliest and accordingly after the property was sold, all the amounts which were received by the sale of the property were distributed amongst the depositors and, to that extent, the liability of the Appellant Company towards the depositors and unsecured creditors was reduced. It is nobody's case that the property, when it was sold, at the relevant time, was undervalued or market price was more than what was

received by the Appellant M/s. Europlast. The grievance which was made by the committee appointed by this Court and, in our view, it was rightly made by the committee that despite the orders passed by this Court directing the committee to make enquiry about the liability of the Appellant Company towards the unsecured creditors and to oversee the auction of the property, this direction was flouted and the Appellant Company on its own has sold the assets. No grievance has been made by the depositors or committee against the Directors of M/s. Europlast. The fact, however, remains that the directions given by the learned Single Judge of disposing of the property through the committee were not complied with. The learned Single Judge by its elaborate order has passed strictures against the Directors of the Appellant Company.

17. The learned Single Judge has, however, observed that so far as the subsequent purchaser, namely, M/s. S.H. Kelkar & Company Limited are concerned, they were bonafide purchasers of the said property and they had purchased the said property after exercising due diligence. The said purchaser had purchased the property for Rs.3,55,00,000/-, which also was the market value of the property at the relevant time. The learned Single Judge, therefore, has not made any observations of fraud against M/s. S.H. Kelkar and Company Limited and has observed that they were

bonafide purchasers of the property. However, the learned Single Judge came to the conclusion that since the directions given by the learned Single Judge were for selling the property through the committee were not complied with, he was pleased to direct that the money should be returned and deposited in this Court, which order has been complied with.

18. Mr. Tulzapurkar, learned senior counsel appearing on behalf of Respondent No.2 in Appeal No.112 of 2010 and other connected matters, submitted that all the parties have now amicably settled the dispute. One of the investors, namely, Mr. N.D. Desai, also has submitted that he has no objection to the Consent Minutes of Order, which have been filed by both the parties. None of the other investors also have any objection. It is an admitted position that when the order was passed by the learned Single Judge in the year 2000, it was clarified that the depositors would not get any interest from the year 2000 onwards. The subsequent purchaser M/s. S.H. Kelkar and Company Limited, however, in the Consent Minutes of Order has agreed to pay interest @ 4% p.a. from 2000. If the committee would have sold the property, then to a very large extent, the investors and unsecured creditors would not have benefited by the sale of the said property.

19. The fresh Consent Minutes of Order, which are filed as an arrangement, which is now in agreement between the parties, clearly discloses that this arrangement works in favour of the investors and depositors, who have patiently waited for 15 years to get their rightful dues.

20. We are of the view that no useful purpose would be served in initiating criminal proceedings either against the Company Registrar or against the other persons and new Directors, who have sold the property. Since they are inclined to accept their plea that it was a bonafide mistake and there was no oblique motive in selling the property on their own since the said land was distributed amongst the investors, we, therefore, also set aside the direction given by the learned Single Judge to initiate action against the said persons, who had committed breach of the order.

21. In our view, it is more important to ensure that the unsecured creditors get back their money in time, instead of disposing of the Appeal on merit and making a detailed enquiry as to whether the Appellant had committed contempt of this Court's order by selling the property on their own and not through the committee, which this Court has appointed. We are, therefore, of the view that the impugned order on all counts will have

to be set aside and the Consent Minutes of Order, which are filed by all the parties, are accepted. The order, therefore, is passed in terms of the Consent Minutes of Order.

22. It is clarified that though in paragraph No.4 of the Consent Minutes of Order, it is mentioned that a declaration is given by the Appellant M/s. Europlast that there is no attachment, injunction, encumbrance, impediment or fetter of any nature in respect of the property referred to in the Deed of Conveyance dated 26th April, 2007 entered between Gorakhanath Electricals Pvt. Ltd. and M/s. S.H. Kelkar and Co. Ltd., the counsel for the Appellant M/s. Europlast submits that it is a typographical mistake and instead of the words "Consent Minutes of Order" the words are described as *"Deed of Conveyance dated 26th April, 2007 between Gorakhnath and M/s. S.H. Kelkar and Company Private Limited."*

23. Liberty is granted to modify Clause (4) in terms of whatever is mentioned here-in-above. Amendment to be carried out forthwith. Amendment to be initialed by all the parties and/or their Advocates. All the Appeals are disposed of in the aforesaid terms. Undertaking given by M/s. S.H. Kelkar and Company Limited to deposit Rs.5,96,89,352/- in this Court on or before 30th September, 2015 is accepted. All these orders

shall become final after the said amount is deposited by M/s. S.H. Kelkar and Company Limited in this Court. These amounts may be kept in a Nationalized Bank.

24. After amounts mentioned in Clauses (1a) and (1b) of Consent Minutes of Order are deposited, place the matter for compliance on 1st October, 2015. The Consent Minutes of Order are taken on record and marked "X" for identification.

25. The Appellant M/s. Europlast shall, after the amount is deposited, give an advertisement in two newspapers; one in English (Times of India) and the other in Hindi, within a period of two weeks from the date of deposit of the amount, mentioning therein that the amount has been deposited in this Court and that the depositors shall apply for withdrawal from the Prothonotary and Senior Master, High Court, Bombay after producing the relevant documentary evidence. It is clarified that the payment may be made to either of the surviving heirs or joint holders.

26. M/s. S.H. Kelkar and Company Limited shall inform the Appellant M/s. Europlast after they deposit the amount in this Court.

27. In view of the disposal of the Appeals, all the pending Notice of Motions, Chamber Summons, interim applications, if any, do not survive and the same are disposed of as such.

28. Certified True Copy of this order is expedited.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[V.M. KANADE, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the original signed Order.