IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO. 181 OF 2015
IN
COMPANY PETITION NO. 365 OF 2012

WITH

OFFICIAL LIQUIDATOR'S REPORT NO. 495 OF 2014

M/s.Silver Oak Commercials Ltd. …Applicant / Third Party

In the matter between

State Bank of India ...Petitioner
vs.
The Official Liquidator for
M/s.Max Energy Pvt.Ltd. ...Respondent

Ms.Sneha Patil i/b. K.K. Associates for Applicant.
Ms.Jasmine Upadhye i/b. M.V.Kini & Co. for Petitioner.
Mr.Prathamesh Kamat i/b. Yashodhan Gavankar for Ex-director.
Mr.Naushad Engineer for Official Liquidator.
Mr.S. Ramakantha, Official Liquidator.

CORAM : S.C. GUPTE, J.

17 OCTOBER 2015

P.C. :

This Official Liquidator’s report seeks a declaration of nullity in respect of a sale of immovable property as between the company (in liquidation) and a third party purchaser, effected during the pendency of the winding up petition and which resulted into a winding up order. The third party purchaser opposes the report. The third party purchaser has also taken out a company application seeking validation of the sale under Section 536(2) of the Companies Act, 1956.

2 What emerges from the record of the case is that, in or about July /

August 2011, the Applicant – third party purchaser was on a look out for premises and approached the company for purchase of leasehold rights of the company in respect of the subject plot of land. The subject plot of land is contained in an MIDC area and was leased by MIDC to the company in liquidation. To that end, on 10 August 2011, a valuation report was obtained by the Applicant. Subsequently on 17 September 2011, the Applicant also obtained a title certificate from an advocate in respect of the property. On 23 September 2011, a Memorandum of Understanding was executed between the Applicant and the company. Under this Memorandum of Understanding, the Applicant agreed to purchase the property, on as is where is basis, for a consideration of Rs.5.20 crores. The Applicant paid the initial amount of Rs.40 lakhs on execution of the MOU and also handed over cheques which, together with initial payment of Rs.40 lakhs, aggregated to about Rs.3.76 crores. On 27 June 2012, the present winding up petition was presented by the petitioning creditor to this Court. The petition was initially dismissed on 16 August 2012, but restored on board on 2 May 2013**.** The petition was thereafter accepted on 4 December 2013. Whilst the petition was pending admission, on 1 January 2014, the company executed a Deed of Assignment of its leasehold rights of the property in favour of the Applicant. The company petition was subsequently admitted on 25 June 2014 and finally by a winding up order dated 30 October 2014, the company petition was allowed and the company was ordered to be wound up.

3 This Court, before passing any further orders on the OLR, appointed a valuer for valuing the property. The property was to be valued keeping in mind the fact that it was an MIDC property leased out to the company. The valuer submitted a report on 23 April 2015 valuing the property at Rs.4.22 crores as of the date of the MOU executed between the Applicant and the company, namely, 23 September 2011.

4 Considering the fact that initial transaction between the parties, which was in the form of an MOU, was executed on 23 September 2011, i.e. much prior to the presentation of the company petition and also considering the fact the consideration payable towards the MOU is in excess of the valuation of

the property determined by a valuer appointed by this Court and was paid substantially before the presentation of the winding up petition, there should be no difficulty in accepting the Applicant's case that the transaction was a bona fide transaction entered into between the parties much prior to the presentation of the winding up petition; and that such transaction was in the interest of the company. The Deed of Assignment executed between the parties in pursuance thereof, though executed during the pendency of the petition, deserves to be validated under Section 536(2) of the Companies Act, 1956. The transaction is not only bona fide as between the company and the third party applicant, but also is evidently in the interest of the company.

5 In the premises, the Official Liquidator's prayer for declaration of invalidity in respect of the same is rejected and the Applicant's prayer in the company application for validation of sale under Section 536(2) of the Companies Act, 1956 is accepted.

6 The consideration in respect of the sale has been made over by the Applicant to SICOM in whose favour the leasehold rights were mortgaged by the company and who sought to proceed against these leasehold rights outside winding up proceedings, under the provisions of the State Financial Corporations Act. It is made clear that if there are any claims of workmen of the company in liquidation, which rank *pari pasu* with the claims of SICOM as a secured creditor under Section 529A of the Companies Act, 1956, SICOM may have to bring in the corresponding amount computed in accordance with Section 529 and 529A of the Companies Act, 1956. The Official Liquidator is directed to prepare a report in this behalf after inviting claims of workmen and other secured creditors, if any.

7 The Official Liquidator's report and the company application are disposed of accordingly.

(S.C. Gupte, J.)